

**Amendment in the Nature of a Substitute**  
**To H.R. 833**  
**As Ordered Reported by the Committee on the**  
**Judiciary**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Bankruptcy Reform Act of 1999”.

4 (b) TABLE OF CONTENTS.—The table of contents of  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs based bankruptcy

Sec. 101. Conversion.

Sec. 102. Dismissal or conversion.

Sec. 103. Notice of alternatives.

Sec. 104. Debtor financial management training test program.

Subtitle B—Consumer Bankruptcy Protections

Sec. 105. Definitions.

Sec. 106. Enforcement.

Sec. 107. Sense of the congress.

Sec. 108. Discouraging abusive reaffirmation practices.

Sec. 109. Promotion of alternative dispute resolution.

Sec. 110. Enhanced disclosure for credit extensions secured by a dwelling.

Sec. 111. Dual use debit card.

Sec. 112. Enhanced disclosures under an open-end credit plan.

Sec. 113. Protection of savings earmarked for the postsecondary education of  
children.

Sec. 114. Effect of discharge.

Sec. 115. Limiting trustee liability.

Sec. 116. Reinforce the fresh start.

Sec. 117. Discouraging bad faith repeat filings.

Sec. 118. Curbing abusive filings.

- Sec. 119. Debtor retention of personal property security.
- Sec. 120. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
- Sec. 121. Giving secured creditors fair treatment in chapter 13.
- Sec. 122. Restraining abusive purchases on secured credit.
- Sec. 123. Fair valuation of collateral.
- Sec. 124. Domiciliary requirements for exemptions.
- Sec. 125. Restrictions on certain exempt property obtained through fraud.
- Sec. 126. Rolling stock equipment.
- Sec. 127. Discharge under chapter 13.
- Sec. 128. Bankruptcy judgeships.
- Sec. 129. Additional amendments to title 11, United States Code.
- Sec. 130. Amendment to section 1325 of title 11, United States Code.
- Sec. 131. Application of the codebtor stay only when the stay protects the debtor.
- Sec. 132. Adequate protection for investors.
- Sec. 133. Limitation on luxury goods.
- Sec. 134. Giving debtors the ability to keep leased personal property by assumption.
- Sec. 135. Adequate protection of lessors and purchase money secured creditors.
- Sec. 136. Automatic stay.
- Sec. 137. Extend period between bankruptcy discharges.
- Sec. 138. Definition of domestic support obligation.
- Sec. 139. Priorities for claims for domestic support obligations.
- Sec. 140. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
- Sec. 141. Exceptions to automatic stay in domestic support obligation proceedings.
- Sec. 142. Nondischargeability of certain debts for alimony, maintenance, and support.
- Sec. 143. Continued liability of property.
- Sec. 144. Protection of domestic support claims against preferential transfer motions.
- Sec. 145. Clarification of meaning of household goods.
- Sec. 146. Nondischargeable debts.
- Sec. 147. Monetary limitation on certain exempt property.
- Sec. 148. Bankruptcy fees.
- Sec. 149. Collection of child support.
- Sec. 150. Excluding employee benefit plan participant contributions and other property from the estate.
- Sec. 151. Clarification of postpetition wages and benefits.
- Sec. 152. Exceptions to automatic stay in domestic support obligation proceedings.
- Sec. 153. Automatic stay inapplicable to certain proceedings against the debtor.

## TITLE II—DISCOURAGING BANKRUPTCY ABUSE

- Sec. 201. Reenactment of chapter 12.
- Sec. 202. Meetings of creditors and equity security holders.
- Sec. 203. Protection of retirement savings in bankruptcy.
- Sec. 204. Protection of refinance of security interest.
- Sec. 205. Executory contracts and unexpired leases.
- Sec. 206. Creditors and equity security holders committees.
- Sec. 207. Amendment to section 546 of title 11, United States Code.
- Sec. 208. Limitation.

- Sec. 209. Amendment to section 330(a) of title 11, United States Code.
- Sec. 210. Postpetition disclosure and solicitation.
- Sec. 211. Preferences.
- Sec. 212. Venue of certain proceedings.
- Sec. 213. Period for filing plan under chapter 11.
- Sec. 214. Fees arising from certain ownership interests.
- Sec. 215. Claims relating to insurance deposits in cases ancillary to foreign proceedings.
- Sec. 216. Defaults based on nonmonetary obligations.
- Sec. 217. Sharing of compensation.
- Sec. 218. Priority for administrative expenses.

#### TITLE III—GENERAL BUSINESS BANKRUPTCY PROVISIONS

- Sec. 301. Definition of disinterested person.
- Sec. 302. Miscellaneous improvements.
- Sec. 303. Extensions.
- Sec. 304. Local filing of bankruptcy cases.
- Sec. 305. Permitting assumption of contracts.

#### TITLE IV SMALL BUSINESS BANKRUPTCY PROVISIONS

- Sec. 401. Flexible rules for disclosure Statement and plan.
- Sec. 402. Definitions.
- Sec. 403. Standard form disclosure Statement and plan.
- Sec. 404. Uniform national reporting requirements.
- Sec. 405. Uniform reporting rules and forms for small business cases.
- Sec. 406. Duties in small business cases.
- Sec. 407. Plan filing and confirmation deadlines.
- Sec. 408. Plan confirmation deadline.
- Sec. 409. Prohibition against extension of time.
- Sec. 410. Duties of the United States trustee.
- Sec. 411. Scheduling conferences.
- Sec. 412. Serial filer provisions.
- Sec. 413. Expanded grounds for dismissal or conversion and appointment of trustee or examiner.
- Sec. 414. Study of operation of title 11 of the United States Code with respect to small businesses.
- Sec. 415. Payment of interest.

#### TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

- Sec. 501. Petition and proceedings related to petition.
- Sec. 502. Applicability of other sections to chapter 9.

#### TITLE VI—STREAMLINING THE BANKRUPTCY SYSTEM

- Sec. 601. Creditor representation at first meeting of creditors.
- Sec. 602. Audit procedures.
- Sec. 603. Giving creditors fair notice in chapter 7 and 13 cases.
- Sec. 604. Dismissal for failure to timely file schedules or provide required information.
- Sec. 605. Adequate time to prepare for hearing on confirmation of the plan.
- Sec. 606. Chapter 13 plans to have a 5-year duration in certain cases.
- Sec. 607. Sense of the Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
- Sec. 608. Elimination of certain fees payable in chapter 11 bankruptcy cases.

- Sec. 609. Study of bankruptcy impact of credit extended to dependent students.
- Sec. 610. Prompt relief from stay in individual cases.
- Sec. 611. Stopping abusive conversions from chapter 13.
- Sec. 612. Bankruptcy appeals.
- Sec. 613. GAO study.

#### TITLE VII—BANKRUPTCY DATA

- Sec. 701. Improved bankruptcy statistics.
- Sec. 702. Uniform rules for the collection of bankruptcy data.
- Sec. 703. Sense of the Congress regarding availability of bankruptcy data.

#### TITLE VIII—BANKRUPTCY TAX PROVISIONS

- Sec. 801. Treatment of certain liens.
- Sec. 802. Effective notice to government.
- Sec. 803. Notice of request for a determination of taxes.
- Sec. 804. Rate of interest on tax claims.
- Sec. 805. Tolling of priority of tax claim time periods.
- Sec. 806. Priority property taxes incurred.
- Sec. 807. Chapter 13 discharge of fraudulent and other taxes.
- Sec. 808. Chapter 11 discharge of fraudulent taxes.
- Sec. 809. Stay of tax proceedings.
- Sec. 810. Periodic payment of taxes in chapter 11 cases.
- Sec. 811. Avoidance of statutory tax liens prohibited.
- Sec. 812. Payment of taxes in the conduct of business.
- Sec. 813. Tardily filed priority tax claims.
- Sec. 814. Income tax returns prepared by tax authorities.
- Sec. 815. Discharge of the estate's liability for unpaid taxes.
- Sec. 816. Requirement to file tax returns to confirm chapter 13 plans.
- Sec. 817. Standards for tax disclosure.
- Sec. 818. Setoff of tax refunds.

#### TITLE IX—ANCILLARY AND OTHER CROSS-BORDER CASES

- Sec. 901. Amendment to add chapter 15 to title 11, United States Code.
- Sec. 902. Amendments to other chapters in title 11, United States Code.

#### TITLE X—FINANCIAL CONTRACT PROVISIONS

- Sec. 1001. Treatment of certain agreements by conservators or receivers of insured depository institutions.
- Sec. 1002. Authority of the corporation with respect to failed and failing institutions.
- Sec. 1003. Amendments relating to transfers of qualified financial contracts.
- Sec. 1004. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
- Sec. 1005. Clarifying amendment relating to master agreements.
- Sec. 1006. Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 1007. Bankruptcy Code amendments.
- Sec. 1008. Recordkeeping requirements.
- Sec. 1009. Exemptions from contemporaneous execution requirement.
- Sec. 1010. Damage measure.
- Sec. 1011. Sipe stay.
- Sec. 1012. Asset-backed securitizations.
- Sec. 1013. Federal Reserve collateral requirements.
- Sec. 1014. Effective date; application of amendments.

## TITLE XI—TECHNICAL CORRECTIONS

- Sec. 1101. Definitions.
- Sec. 1102. Adjustment of dollar amounts.
- Sec. 1103. Extension of time.
- Sec. 1104. Technical amendments.
- Sec. 1105. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
- Sec. 1106. Limitation on compensation of professional persons.
- Sec. 1107. Special tax provisions.
- Sec. 1108. Effect of conversion.
- Sec. 1109. Allowance of administrative expenses.
- Sec. 1110. Priorities.
- Sec. 1111. Exemptions.
- Sec. 1112. Exceptions to discharge.
- Sec. 1113. Effect of discharge.
- Sec. 1114. Protection against discriminatory treatment.
- Sec. 1115. Property of the estate.
- Sec. 1116. Preferences.
- Sec. 1117. Postpetition transactions.
- Sec. 1118. Disposition of property of the estate.
- Sec. 1119. General provisions.
- Sec. 1120. Appointment of elected trustee.
- Sec. 1121. Abandonment of railroad line.
- Sec. 1122. Contents of plan.
- Sec. 1123. Discharge under chapter 12.
- Sec. 1124. Bankruptcy cases and proceedings.
- Sec. 1125. Knowing disregard of bankruptcy law or rule.
- Sec. 1126. Transfers made by nonprofit charitable corporations.
- Sec. 1127. Prohibition on certain actions for failure to incur finance charges.
- Sec. 1128. Protection of valid purchase money security interests.
- Sec. 1129. Trustees.

## TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

- Sec. 1201. Effective date; application of amendments.

1                   **TITLE I—CONSUMER**  
2                   **BANKRUPTCY PROVISIONS**  
3                   **Subtitle A—Needs based**  
4                   **bankruptcy**

5   **SEC. 101. CONVERSION.**

- 6           Section 706(c) of title 11, United States Code, is  
7   amended by inserting “or consents to” after “requests”.

1 **SEC. 102. DISMISSAL OR CONVERSION.**

2 (a) IN GENERAL.—Section 707 of title 11, United  
3 States Code, is amended—

4 (1) by striking the section heading and insert-  
5 ing the following:

6 **“§ 707. Dismissal of a case or conversion to a case**  
7 **under chapter 13”;**

8 and

9 (2) in subsection (b)—

10 (A) by inserting “(1)” after “(b)”; and

11 (B) in paragraph (1), as redesignated by  
12 subparagraph (A) of this paragraph—

13 (i) in the first sentence—

14 (I) by striking “but not at the re-  
15 quest or suggestion of” and inserting  
16 “the trustee, or”;

17 (II) by inserting “, or, with the  
18 debtor’s consent, convert such a case  
19 to a case under chapter 13 of this  
20 title,” after “consumer debts”; and

21 (III) by striking “substantial  
22 abuse” and inserting “abuse”; and

23 (ii) by striking the second and third  
24 sentences and inserting the following:

25 “(2)(A)(i) In considering under paragraph (1) wheth-  
26 er the granting of relief would be an abuse of the provi-

1 sions of this chapter, the court shall presume abuse exists  
2 if the debtor's current monthly income less estimated ad-  
3 ministrative expenses and reasonable attorneys' fees, and  
4 amounts set forth in clauses (ii) for monthly expenses  
5 (which shall include, if applicable, the continuation of ac-  
6 tual expenses of a dependent child under the age of 18  
7 for tuition, books, and required fees at a private elemen-  
8 tary or secondary school, not exceeding \$10,000 per year,  
9 which amount shall be adjusted pursuant to section  
10 104(b)), (iii) for monthly payments on account of secured  
11 debts, and (iv) for monthly unsecured priority debt pay-  
12 ments, and multiplied by 60 months is not less than  
13 \$6,000.

14       “(ii) The debtor's monthly expenses shall be the debt-  
15 or's applicable monthly expense amounts specified under  
16 the National Standards and Local Standards, and the  
17 debtor's applicable monthly expenses for the categories  
18 specifically listed as Other Necessary Expenses issued by  
19 the Internal Revenue Service for the area in which the  
20 debtor resides, as in effect on the date of the entry of  
21 the order for relief, for the debtor, the dependents of the  
22 debtor, and the spouse of the debtor in a joint case, if  
23 the spouse is not otherwise a dependent. In addition, if  
24 it is demonstrated that it is reasonable and necessary, the  
25 debtor may also subtract an allowance of up to 5% of the

1 food and clothing categories as specified by the National  
2 Standards issued by the Internal Revenue Service. Not-  
3 withstanding any other provision of this clause, the debt-  
4 or's monthly expenses shall not include any payments for  
5 debts.

6       “(iii) The debtor's average monthly payments on ac-  
7 count of secured debts shall be calculated as the total of  
8 all amounts scheduled as contractually due to secured  
9 creditors in each month of the 60 months following the  
10 date of the petition, and dividing that total by 60 months.

11       “(iv) The debtor's monthly unsecured priority debt  
12 payments (including payments for priority child support  
13 and alimony claims) shall be calculated as the total  
14 amount of unsecured debts entitled to priority, and divid-  
15 ing the total by 60 months.

16       “(v) For the purposes of this subsection, a family or  
17 household shall consist of the debtor, the debtor's spouse,  
18 and the debtor's dependents, but not a legally separated  
19 spouse unless the spouse files a joint case with the debtor.

20       “(B) In any proceeding brought under this sub-  
21 section, the presumption of abuse may be rebutted only  
22 by demonstrating extraordinary circumstances that re-  
23 quire additional expenses or adjustment of current month-  
24 ly income. In order to establish extraordinary cir-  
25 cumstances, the debtor must itemize each additional ex-



1   pense or adjustment of income and provide documentation  
2   for such expenses or adjustment of income and a detailed  
3   explanation of the extraordinary circumstances which  
4   make such expenses or adjustment of income necessary  
5   and reasonable. The debtor shall attest under oath to the  
6   accuracy of any information provided to demonstrate that  
7   additional expenses or adjustment to income are required.  
8   The presumption of abuse may be rebutted only if such  
9   additional expenses or adjustments to income cause the  
10  debtor's current monthly income less estimated adminis-  
11  trative expenses and reasonable attorneys' fees, and the  
12  amounts set forth in clauses (ii), (iii), and (iv) of subpara-  
13  graph (A) when multiplied by 60 to be less than \$6,000.

14       “(C) As part of the schedule of current income and  
15  expenditures required under section 521 of this title, the  
16  debtor shall include a statement of the debtor's current  
17  monthly income, and the calculations which determine  
18  whether a presumption arises under subparagraph (A)(i),  
19  showing how each amount is calculated. The bankruptcy  
20  rules promulgated under section 2075 of title 28, United  
21  States Code, shall prescribe a form for such statement and  
22  may provide general rules on its content.

23       “(D) No judge, United States trustee, panel trustee,  
24  bankruptcy administrator or other party in interest shall  
25  bring a motion under this paragraph if the debtor and

1 the debtor's spouse combined, as of the date of the order  
2 for relief, have current monthly total income equal to or  
3 less than the regional median household monthly income  
4 calculated on a semiannual basis for a household of equal  
5 size. However, for a household of more than 4 individuals,  
6 the median income shall be that of a household of 4 indi-  
7 viduals plus \$583 for each additional member of that  
8 household.

9 “(3) In considering under paragraph (1) whether the  
10 granting of relief would be an abuse of the provisions of  
11 this chapter in a case in which the presumption in para-  
12 graph (2)(A)(i) does not apply or has been rebutted, the  
13 court shall consider—

14 “(A) whether the debtor filed the petition in  
15 bad faith; or

16 “(B) the totality of the circumstances (includ-  
17 ing whether the debtor seeks to reject a personal  
18 services contract and the financial need for such re-  
19 jection as sought by the debtor) of the debtor's fi-  
20 nancial situation demonstrates abuse.

21 “(4)(A) If a panel trustee appointed under section  
22 586(a)(1) of title 28 or bankruptcy administrator brings  
23 a motion for dismissal or conversion under this subsection  
24 and the court grants that motion and finds that the action  
25 of the counsel for the debtor in filing under this chapter

1 violated Rule 9011, the court shall assess damages which  
2 may include ordering:

3 “(i) the counsel for the debtor to reimburse the  
4 trustee for all reasonable costs in prosecuting the  
5 motion, including reasonable attorneys’ fees.

6 “(ii) the assessment of an appropriate civil pen-  
7 alty against the counsel for the debtor; and

8 “(iii) the payment of the civil penalty to the  
9 panel trustee, bankruptcy administrator or the  
10 United States trustee.

11 “(B) In the case of a petition filed under sections  
12 301, 302, or 303 of this title and supporting lists, sched-  
13 ules and documents filed under section 521(a)(1) of this  
14 title, the signature of an attorney on the petition shall con-  
15 stitute a certificate that the attorney has—

16 “(i) performed a reasonable investigation into  
17 the circumstances that gave rise to the petition; and

18 “(ii) determined that the petition, lists, sched-  
19 ules, and documents—

20 “(I) are well grounded in fact; and

21 “(II) are warranted by existing law or a  
22 good faith argument for the extension, modi-  
23 fication, or reversal of existing law and do not  
24 constitute an abuse under paragraph (1) of this  
25 subsection.

1       “(5) The court may award a debtor all reasonable  
2 costs in contesting a motion filed by a party in interest  
3 (not including a trustee or the United States trustee)  
4 under this subsection (including reasonable attorneys’  
5 fees) if—

6               “(A) the court does not grant the motion; and

7               “(B) the court finds that—

8                       “(i) the position of the party that brought  
9 the motion was not substantially justified; or

10                      “(ii) the party brought the motion solely  
11 for the purpose of coercing a debtor into  
12 waiving a right guaranteed to the debtor under  
13 this title.

14       “(6) However, only the court, the United States  
15 trustee, or the trustee may file a motion to dismiss or con-  
16 vert a case under this subsection if the current monthly  
17 income of the debtor and the debtor’s spouse combined,  
18 as of the date of the order for relief, when multiplied by  
19 12, is less than the highest national median family income  
20 last reported by the Bureau of the Census for a family  
21 of equal or lesser size, or in the case of a household of  
22 1 person, the national median household income for 1  
23 earner. Notwithstanding the foregoing, the national me-  
24 dian family income for a family of more than 4 individuals  
25 shall be the national median family income last reported

1 by the Bureau of the Census for a family of 4 individuals  
2 plus \$583 for each additional member of the family.

3 “(7) In making a determination whether to dismiss  
4 a case under this section, the court may not take into con-  
5 sideration whether a debtor has made, or continues to  
6 make, charitable contributions (that meet the definition  
7 of ‘charitable contribution’ under section 548(d)(3)) to  
8 any qualified religious or charitable entity or organization  
9 (as that term is defined in section 548(d)(4)).

10 “(8) Not later than 3 years after the date of enact-  
11 ment of the Bankruptcy Reform Act of 1999, the Director  
12 of the Executive Office for United States Trustees shall  
13 submit a report, to the Committee on the Judiciary of the  
14 House of Representatives and the Committee on the Judi-  
15 ciary of the Senate, containing its findings regarding the  
16 utilization of the Internal Revenue Service standards for  
17 determining the current monthly expenses under section  
18 707(b)(1)(A)(ii) of title 11, United States Code, of debtors  
19 and the impact that the application of such standards has  
20 had on debtors and on the bankruptcy courts. Such report  
21 may include recommendations for amendments to such  
22 title, consistent with the Director’s findings.”.

23 (b) DEFINITIONS.—Section 101 of title 11, United  
24 States Code, is amended—

1           (1) by inserting after paragraph (10) the fol-  
2       lowing:

3           “(10A) ‘current monthly income’ means the av-  
4       erage monthly income from all sources derived which  
5       the debtor, or in a joint case, the debtor and the  
6       debtor’s spouse, receive without regard to whether it  
7       is taxable income, in the 180 days preceding the  
8       date of determination, and includes any amount paid  
9       by anyone other than the debtor or, in a joint case,  
10      the debtor and the debtor’s spouse, on a regular  
11      basis to the household expenses of the debtor or the  
12      debtor’s dependents and, in a joint case, the debtor’s  
13      spouse if not otherwise a dependent, but excludes  
14      payments to victims of war crimes or crimes against  
15      humanity;”;

16          (2) by inserting after paragraph (17) the fol-  
17      lowing:

18          “(17A) ‘estimated administrative expenses and  
19      reasonable attorneys’ fees’ means 10 percent of pro-  
20      jected payments under a chapter 13 plan;”.

21      (c) ADMINISTRATIVE PROVISIONS.—Section 704 of  
22      title 11, United States Code, is amended—

23          (1) in paragraph (8) by striking “and” at the  
24      end;

1           (2) in paragraph (9) by striking the period at  
2           the end and inserting “; and”; and

3           (3) by adding at the end the following:

4           “(10)(A) With respect to an individual debtor,  
5           the trustee shall review all materials filed by the  
6           debtor, consider all information presented at the  
7           first meeting of creditors, and within 10 days after  
8           the first meeting of creditors file with the court a  
9           statement as to whether the debtor’s case should be  
10          presumed to be an abuse under section 707(b) of  
11          this title. The court shall provide a copy of such  
12          statement to all creditors within 5 days after such  
13          statement is filed. If, based on the filing of such  
14          statement with the court, the trustee determines  
15          that the debtor’s case should be presumed to be an  
16          abuse under section 707(b) of this title and if the  
17          current monthly income of the debtor and the debt-  
18          or’s spouse combined, as of the date of the order for  
19          relief, when multiplied by 12, is not less than the  
20          highest national median family income reported for  
21          a family of equal or lesser size, or in the case of a  
22          household of 1 person, the national median house-  
23          hold income for 1 earner, then the trustee shall  
24          within 30 days of the filing of such statement,  
25          either—

1           “(i) file a motion to dismiss or convert  
2           under section 707(b) of this title; or

3           “(ii) file a statement setting forth the rea-  
4           sons the trustee or bankruptcy administrator  
5           does not believe that such a motion would be  
6           appropriate.

7           “(B) Notwithstanding subparagraph (A), for  
8           purposes of this paragraph the national family in-  
9           come for a family of more than 4 individuals shall  
10          be the national median family income last reported  
11          by the Bureau of the Census for a family of 4 indi-  
12          viduals plus \$583 for each additional member of the  
13          family.”.

14          (d) CLERICAL AMENDMENT.—The table of sections  
15          at the beginning of chapter 7 of title 11, United States  
16          Code, is amended by striking the item relating to section  
17          707 and inserting the following:

          “707. Dismissal of a case or conversion to a case under chapter 13.”.

18       **SEC. 103. NOTICE OF ALTERNATIVES.**

19          Section 342(b) of title 11, United States Code, is  
20          amended to read as follows:

21          “(b) Before the commencement of a case under this  
22          title by an individual whose debts are primarily consumer  
23          debts, the clerk shall give to such individual written notice  
24          containing—

25               “(1) a brief description of—



1           “(A) chapters 7, 11, 12, and 13 and the  
2           general purpose, benefits, and costs of proceed-  
3           ing under each of those chapters; and

4           “(B) the types of services available from  
5           credit counseling agencies; and

6           “(2) statements specifying that—

7           “(A) a person who knowingly and fraudu-  
8           lently conceals assets or makes a false oath or  
9           statement under penalty of perjury in connec-  
10          tion with a bankruptcy case shall be subject to  
11          fine, imprisonment, or both; and

12          “(B) all information supplied by a debtor  
13          in connection with a bankruptcy case is subject  
14          to examination by the Attorney General.”.

15 **SEC. 104. DEBTOR FINANCIAL MANAGEMENT TRAINING**  
16 **TEST PROGRAM.**

17       (a) DEVELOPMENT OF FINANCIAL MANAGEMENT  
18 AND TRAINING CURRICULUM AND MATERIALS.—The Di-  
19 rector of the Executive Office for United States Trustees  
20 (in this section referred to as the “Director”) shall consult  
21 with a wide range of individuals who are experts in the  
22 field of debtor education, including trustees who are ap-  
23 pointed under chapter 13 of title 11 of the United States  
24 Code and who operate financial management education  
25 programs for debtors, and shall develop a financial man-

1   agement training curriculum and materials that can be  
2   used to educate individual debtors on how to better man-  
3   age their finances.

4       (b) TEST—(1) The Director shall select 6 judicial dis-  
5   tricts of the United States in which to test the effective-  
6   ness of the financial management training curriculum and  
7   materials developed under subsection (a).

8       (2) For a 18-month period beginning not later than  
9   270 days after the date of the enactment of this Act, such  
10   curriculum and materials shall be, for the 6 judicial dis-  
11   tricts selected under paragraph (1), used as the instruc-  
12   tional course concerning personal financial management  
13   for purposes of section 111 of this title.

14       (c) EVALUATION.—(1) During the 1-year period re-  
15   ferred to in subsection (b), the Director shall evaluate the  
16   effectiveness of—

17           (A) the financial management training curricu-  
18       lum and materials developed under subsection (a);  
19       and

20           (B) a sample of existing consumer education  
21       programs such as those described in the Report of  
22       the National Bankruptcy Review Commission (Octo-  
23       ber 20, 1997) that are representative of consumer  
24       education programs carried out by the credit indus-  
25       try, by trustees serving under chapter 13 of title 11

1 of the United States Code, and by consumer coun-  
2 selling groups.

3 (2) Not later than 3 months after concluding such  
4 evaluation, the Director shall submit a report to the  
5 Speaker of the House of Representatives and the Presi-  
6 dent pro tempore of the Senate, for referral to the appro-  
7 priate committees of the Congress, containing the findings  
8 of the Director regarding the effectiveness of such curricu-  
9 lum, such materials, and such programs and their costs.

## 10 **Subtitle B—Consumer Bankruptcy** 11 **Protections**

### 12 **SEC. 105. DEFINITIONS.**

13 (a) DEFINITIONS.—Section 101 of title 11, United  
14 States Code, is amended—

15 (1) by inserting after paragraph (2) the follow-  
16 ing:

17 “(3) ‘assisted person’ means any person whose  
18 debts consist primarily of consumer debts and whose  
19 non-exempt assets are less than \$150,000;”;

20 (2) by inserting after paragraph (4) the follow-  
21 ing:

22 “(4A) ‘bankruptcy assistance’ means any goods  
23 or services sold or otherwise provided to an assisted  
24 person with the express or implied purpose of pro-  
25 viding information, advice, counsel, document prepa-

1       ration or filing, or attendance at a creditors' meeting  
2       or appearing in a proceeding on behalf of another or  
3       providing legal representation with respect to a pro-  
4       ceeding under this title;"; and

5               (3) by inserting after paragraph (12A) the fol-  
6       lowing:

7               “(12B) ‘debt relief agency’ means any person  
8       who provides any bankruptcy assistance to an as-  
9       sisted person in return for the payment of money or  
10      other valuable consideration, or who is a bankruptcy  
11      petition preparer pursuant to section 110 of this  
12      title, but does not include any person that is any of  
13      the following or an officer, director, employee or  
14      agent thereof—

15              “(A) any nonprofit organization which is  
16      exempt from taxation under section 501(c)(3)  
17      of the Internal Revenue Code of 1986;

18              “(B) any creditor of the person to the ex-  
19      tent the creditor is assisting the person to re-  
20      structure any debt owed by the person to the  
21      creditor; or

22              “(C) any depository institution (as defined  
23      in section 3 of the Federal Deposit Insurance  
24      Act) or any Federal credit union or State credit  
25      union (as those terms are defined in section

1           101 of the Federal Credit Union Act), or any  
2           affiliate or subsidiary of such a depository insti-  
3           tution or credit union;”.

4           (b)     CONFORMING     AMENDMENT.—In     section  
5     104(b)(1) by inserting “101(3),” after “sections”.

6     **SEC. 106. ENFORCEMENT.**

7           (a) ENFORCEMENT.—Subchapter II of chapter 5 of  
8     title 11, United States Code, is amended by adding at the  
9     end the following:

10    **“§ 526. Debt relief agency enforcement**

11       “(a) A debt relief agency shall not—

12           “(1) fail to perform any service which the debt  
13       relief agency has told the assisted person or prospec-  
14       tive assisted person the agency would provide that  
15       person in connection with the preparation for or ac-  
16       tivities during a proceeding under this title;

17           “(2) make any statement, or counsel or advise  
18       any assisted person to make any statement in any  
19       document filed in a proceeding under this title,  
20       which is untrue and misleading or which upon the  
21       exercise of reasonable care, should be known by the  
22       debt relief agency to be untrue or misleading;

23           “(3) misrepresent to any assisted person or pro-  
24       spective assisted person, directly or indirectly, af-  
25       firmatively or by material omission, what services

1       the debt relief agency can reasonably expect to pro-  
2       vide that person, or the benefits an assisted person  
3       may obtain or the difficulties the person may experi-  
4       ence if the person seeks relief in a proceeding pursu-  
5       ant to this title; or

6           “(4) advise an assisted person or prospective  
7       assisted person to incur more debt in contemplation  
8       of that person filing a proceeding under this title or  
9       in order to pay an attorney or bankruptcy petition  
10      preparer fee or charge for services performed as part  
11      of preparing for or representing a debtor in a pro-  
12      ceeding under this title.”.

13      “(b) ASSISTED PERSON WAIVERS INVALID.—Any  
14      waiver by any assisted person of any protection or right  
15      provided by or under this section shall not be enforceable  
16      against the debtor by any Federal or State court or any  
17      other person, but may be enforced against a debt relief  
18      agency.

19      “(c) NONCOMPLIANCE.—

20           “(1) Any contract between a debt relief agency  
21      and an assisted person for bankruptcy assistance  
22      which does not comply with the material require-  
23      ments of this section shall be treated as void and  
24      may not be enforced by any Federal or State court  
25      or by any other person.

1           “(2) Any debt relief agency shall be liable to an  
2           assisted person in the amount of any fees or charges  
3           in connection with providing bankruptcy assistance  
4           to such person which the debt relief agency has re-  
5           ceived, for actual damages, and for reasonable attor-  
6           neys’ fees and costs if the debt relief agency is  
7           found, after notice and hearing, to have—

8                   “(A) intentionally or negligently failed to  
9                   comply with any provision of this section with  
10                  respect to a bankruptcy case or related proceed-  
11                  ing of the assisted person;

12                  “(B) provided bankruptcy assistance to an  
13                  assisted person in a case or related proceeding  
14                  which is dismissed or converted because of the  
15                  debt relief agency’s intentional or negligent fail-  
16                  ure to file bankruptcy papers, including papers  
17                  specified in section 521 of this title; or

18                  “(C) intentionally or negligently dis-  
19                  regarded the material requirements of this title  
20                  or the Federal Rules of Bankruptcy Procedure  
21                  applicable to such debt relief agency.

22           “(3) In addition to such other remedies as are  
23           provided under State law, whenever the chief law en-  
24           forcement officer of a State, or an official or agency  
25           designated by a State, has reason to believe that any

1 person has violated or is violating this section, the  
2 State—

3 “(A) may bring an action to enjoin such  
4 violation;

5 “(B) may bring an action on behalf of its  
6 residents to recover the actual damages of as-  
7 sisted persons arising from such violation, in-  
8 cluding any liability under paragraph (2); and

9 “(C) in the case of any successful action  
10 under subparagraph (A) or (B), shall be award-  
11 ed the costs of the action and reasonable attor-  
12 ney fees as determined by the court.

13 “(4) The United States District Court for any  
14 district located in the State shall have concurrent ju-  
15 risdiction of any action under subparagraph (A) or  
16 (B) of paragraph (3).

17 “(5) Notwithstanding any other provision of  
18 Federal law and in addition to any other remedy  
19 provided under Federal or State law, if the court, on  
20 its own motion or on the motion of the United  
21 States trustee or the debtor, finds that a person in-  
22 tentiously violated this section, or engaged in a  
23 clear and consistent pattern or practice of violating  
24 this section, the court may—

25 “(A) enjoin the violation of such section; or



1                   “(B) impose an appropriate civil penalty  
2                   against such person.

3           “(c) RELATION TO STATE LAW.—This section shall  
4 not annul, alter, affect or exempt any person subject to  
5 those sections from complying with any law of any State  
6 except to the extent that such law is inconsistent with  
7 those sections, and then only to the extent of the inconsis-  
8 ency.”.

9           (b) CONFORMING AMENDMENT.—The table of sec-  
10 tions for chapter 5 of title 11, United States Code, is  
11 amended by inserting after the item relating to section  
12 527, the following:

“526. Debt relief agency enforcement.”.

13 **SEC. 107. SENSE OF THE CONGRESS.**

14           It is the sense of the Congress that States should de-  
15 velop curricula relating to the subject of personal finance,  
16 designed for use in elementary and secondary schools.

17 **SEC. 108. DISCOURAGING ABUSIVE REAFFIRMATION PRAC-**  
18 **TICES.**

19           Section 524 of title 11, United States Code, is  
20 amended—

21                   (1) in subsection (c)—

22                           (A) in paragraph (2)—

23                                   (i) in subparagraph (A) by striking

24                                   “and” at the end;

1 (ii) in subparagraph (B) by adding

2 “and” at the end; and

3 (iii) by adding at the end the follow-

4 ing:

5 “(C) if the consideration for such agreement is  
6 based on a wholly unsecured consumer debt (except  
7 for debts owed to creditors defined in section  
8 461(b)(1)(A)(iv) of title 12, United States Code),  
9 such agreement contains a clear and conspicuous  
10 statement which advises the debtor—

11 “(i) that the debtor is entitled to a hearing  
12 before the court at which the debtor shall ap-  
13 pear in person and at which the court will de-  
14 cide whether the agreement is an undue hard-  
15 ship, not in the debtor’s best interest, and not  
16 the result of a threat by the creditor to take  
17 any action that cannot be legally taken or that  
18 is not intended to be taken; and

19 “(ii) that if the debtor is represented by  
20 counsel, the debtor may waive the debtor’s right  
21 to such a hearing by signing a statement  
22 waiving the hearing, stating that the debtor is  
23 represented by counsel, and identifying such  
24 counsel;” and

25 (B) in paragraph (6)(A)—

1 (i) by striking “and” at the end of  
2 clause (i);

3 (ii) by striking the period at the end  
4 of clause (ii) and inserting “; and”; and

5 (iii) by adding at the end thereof the  
6 following:

7 “(iii) not entered into by the debtor as the  
8 result of a threat by the creditor to take any  
9 action that cannot be legally taken or that is  
10 not intended to be taken.”; and

11 (2) in the 3d sentence of subsection (d)—

12 (A) by striking “of this section” and in-  
13 serting a comma; and

14 (B) by inserting after “such agreement”  
15 the following:

16 “or if the consideration for such agreement is based on  
17 a wholly unsecured consumer debt (except for debts owed  
18 to creditors defined in section 461(b)(1)(A)(iv) of title 12,  
19 United States Code) and the debtor has not waived the  
20 debtor’s right to a hearing on the agreement in accordance  
21 with subsection (c)(2)(C) of this section”.

1   **SEC. 109. PROMOTION OF ALTERNATIVE DISPUTE RESOLU-**  
2                           **TION.**

3           (a) REDUCTION OF CLAIM.—Section 502 of title 11,  
4   United States Code, is amended by adding at the end the  
5   following:

6           “(k)(1) The court, on the motion of the debtor and  
7   after a hearing, may reduce a claim filed under this sec-  
8   tion based wholly on unsecured consumer debts by not  
9   more than 20 percent, if the debtor can prove by clear  
10   and convincing evidence that the claim was filed by a cred-  
11   itor who unreasonably refused to negotiate a reasonable  
12   alternative repayment schedule proposed by an approved  
13   credit counseling agency acting on behalf of the debtor,  
14   and if—

15           “(A) such offer was made within the period be-  
16   ginning 60 days before the filing of the petition;

17           “(B) such offer provided for payment of at least  
18   60 percent of the amount of the debt over a period  
19   not to exceed the repayment period of the loan, or  
20   a reasonable extension thereof; and

21           “(C) no part of the debt under the alternative  
22   repayment schedule is nondischargeable, is entitled  
23   to priority under section 507 of this title, or would  
24   be paid a greater percentage in a chapter 13 pro-  
25   ceeding than offered by the debtor.

1       “(2) The debtor shall have the burden of proving that  
2 the proposed alternative repayment schedule was made in  
3 the 60-day period specified in subparagraph (A) and that  
4 the creditor unreasonably refused to consider the debtor’s  
5 proposal.”.

6       (b) LIMITATION ON AVOIDABILITY.—Section 547 of  
7 title 11, United States Code, is amended by adding at the  
8 end the following:

9       “(h) The trustee may not avoid a transfer if such  
10 transfer was made as a part of an alternative repayment  
11 plan between the debtor and any creditor of the debtor  
12 created by an approved credit counseling agency.”.

13 **SEC. 110. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**  
14 **SIONS SECURED BY A DWELLING.**

15       (a) STUDY REQUIRED.—During the period beginning  
16 180 days after the date of enactment of this Act and end-  
17 ing 18 months after the date of the enactment, the Board  
18 of Governors of the Federal Reserve System (in this sec-  
19 tion referred to as the “Board”) shall conduct a study and  
20 submit to Congress a report (including recommendations  
21 for any appropriate legislation) regarding—

22           (1) whether a consumer engaging in an open-  
23 end credit transaction (as defined pursuant to sec-  
24 tion 103 of the Truth in lending Act) secured by the  
25 consumer’s principal dwelling is provided adequate

1 information under Federal law, including under sec-  
2 tion 127A of the Truth in Lending Act, regarding  
3 the tax deductibility of interest paid on such trans-  
4 action; and

5 (2) whether a consumer engaging in a closed-  
6 end credit transaction (as defined pursuant to sec-  
7 tion 103 of the Truth in Lending Act) secured by  
8 the consumer's principal dwelling is provided ade-  
9 quate information regarding the tax deductibility of  
10 interest paid on such transaction.

11 In conducting such study, the Board shall specifically con-  
12 sider whether additional disclosures are necessary with re-  
13 spect to such open-end or closed-end credit transactions  
14 in which the amount of the credit extended exceeds the  
15 fair market value of the dwelling.

16 (b) REGULATIONS.—If the Board determines that ad-  
17 ditional disclosures are necessary in connection with trans-  
18 actions described in subsection (a), the Board, pursuant  
19 to its authority under the Truth in Lending Act, may pro-  
20 mulgate regulations that would require such additional  
21 disclosures. Any such regulations promulgated by the  
22 Board under this section shall not take effect before the  
23 end of the 36-month period after the date of the enact-  
24 ment of this Act.

1   **SEC. 111. DUAL USE DEBIT CARD.**

2           (a) **STUDY REQUIRED.**—The Board of Governors of  
3 the Federal Reserve System (in this section referred to  
4 as the “Board”) shall conduct a study of existing protec-  
5 tions provided to consumers to limit their liability for un-  
6 authorized use of a debit card or similar access device.

7           (b) **SPECIFIC CONSIDERATIONS.**—In conducting the  
8 study required by subsection (a), the Board shall specifi-  
9 cally consider the following—

10           (1) the extent to which existing provisions of  
11 section 909 of the Electronic Fund Transfer Act and  
12 the Board’s implementing regulations provide ade-  
13 quate unauthorized use liability protection for con-  
14 sumers;

15           (2) the extent to which any voluntary industry  
16 rules have enhanced the level of protection afforded  
17 consumers in connection with such unauthorized use  
18 liability; and

19           (3) whether amendments to the Electronic  
20 Funds Transfer Act or the Board’s implementing  
21 regulations thereto are necessary to provide ade-  
22 quate protection for consumers in this area.

23           (c) **REPORT AND REGULATIONS.**—Not later than 2  
24 years after the date of the enactment of this Act, the  
25 Board shall make public a report on its findings with re-  
26 spect to the adequacy of existing protections afforded con-

1 sumers with respect to unauthorized-use liability for debit  
2 cards and similar access devices. If the Board determines  
3 that such protections are inadequate, the Board, pursuant  
4 to its authority under the Electronic Funds Transfer Act,  
5 may issue regulations to address such inadequacy. Any  
6 regulations issued by the Board shall not be effective be-  
7 fore 36 months after the date of the enactment of this  
8 Act.

9 **SEC. 112. ENHANCED DISCLOSURES UNDER AN OPEN-END**  
10 **CREDIT PLAN.**

11 (a) INITIAL AND ANNUAL MINIMUM PAYMENT DIS-  
12 CLOSURE.—Section 127(a) of the Truth in Lending Act  
13 (15 U.S.C. 1637(a)) is amended by adding at the end the  
14 following:

15 “(9) In the case of any credit or charge card  
16 account under an open-end consumer credit plan on  
17 which a minimum monthly or periodic payment will  
18 be required, other than an account described in  
19 paragraph (8)—

20 “(A) the following statement: ‘The mini-  
21 mum payment amount shown on your billing  
22 statement is the smallest payment which you  
23 can make in order to keep the account in good  
24 standing. This payment option is offered as a  
25 convenience and you may make larger payments



1 at any time. Making only the minimum pay-  
2 ment each month will increase the amount of  
3 interest you pay and the length of time it takes  
4 to repay your outstanding balance.’;

5 “(B) if the plan provides that the con-  
6 sumer will be permitted to forgo making a mini-  
7 mum payment during a specified billing cycle, a  
8 statement, if applicable, that if the consumer  
9 chooses to forgo making the minimum payment,  
10 finance charges will continue to accrue; and

11 “(C) an example, based on an annual per-  
12 centage rate and method for determining mini-  
13 mum periodic payments recently in effect for  
14 that creditor, and a \$500 outstanding balance,  
15 showing the estimated minimum periodic pay-  
16 ment, and the estimated period of time it would  
17 take to repay the \$500 outstanding balance if  
18 the consumer paid only the minimum periodic  
19 payment on each monthly or periodic statement  
20 and obtained no additional extensions of credit.

21 “(10) With respect to one billing cycle per cal-  
22 endar year, the creditor shall transmit the informa-  
23 tion required under paragraph (9) to each consumer  
24 to whom the creditor is required to transmit a state-  
25 ment pursuant to subsection (b) for such billing

1 cycle. The creditor shall also transmit to such con-  
2 sumer for such cycle a worksheet prescribed by the  
3 Board to assist the consumer in determining the  
4 consumer's household income and debt obligations.”.

5 (b) PERIODIC MINIMUM PAYMENT DISCLOSURES.—  
6 Section 127(b) of the Truth in Lending Act (15 U.S.C.  
7 1637(b)) is amended by adding at the end the following:

8 “(11) The following statement: ‘The minimum  
9 payment amount shown on your billing statement is  
10 the smallest payment which you can make in order  
11 to keep the account in good standing. This payment  
12 option is offered as a convenience and you may  
13 make larger payments at any time. Making only the  
14 minimum payment each month will increase the  
15 amount of interest you pay and the length of time  
16 it takes to repay your outstanding balance.’”.

17 (c) ENFORCEMENT.—Section 127 of the Truth in  
18 Lending Act (15 U.S.C. 1637) is amended by adding at  
19 the end the following:

20 “(h) In promulgating regulations to implement the  
21 disclosure of an example required under subsection  
22 (a)(9)(C) and (a)(10), the Board shall set forth a model  
23 disclosure to accompany the example stating that the cred-  
24 it features shown are only an example which does not obli-  
25 gate the creditor, but is intended to illustrate the approxi-

1 mate length of time it could take to repay using the as-  
2 sumptions set forth in subsection (a)(9)(C) without regard  
3 to any other factors that could impact an approximate re-  
4 payment period, including other credit features or the con-  
5 sumer's payment or other behavior with respect to the ac-  
6 count. Compliance with the disclosures required under  
7 subsection (a)(9)(C) and (a)(10) shall be enforced exclu-  
8 sively by the Federal agencies set forth in section 108.”.

9 (d) REGULATORY IMPLEMENTATION.—The Board of  
10 Governors of the Federal Reserve System (in this section  
11 referred to as the “Board”) shall promulgate regulations  
12 implementing the amendments made by subsections (a)  
13 and (b). Such regulations shall take effect no earlier than  
14 the end of the 36-month period beginning on the date of  
15 the enactment of this Act.

16 (e) STUDY REQUIRED.—The Board shall conduct a  
17 study to determine whether consumers have adequate in-  
18 formation about borrowing activities which may result in  
19 financial problems. In studying this issue, the Board shall  
20 consider the extent to which—

21 (1) consumers, in establishing new credit ar-  
22 rangements, are aware of their existing payment ob-  
23 ligations, the need to consider those obligations in  
24 deciding to take on new credit, and how taking on  
25 excessive credit can result in financial difficulty;

1           (2) minimum periodic payment features offered  
2           in connection with open-end credit plans impact con-  
3           sumer default rates;

4           (3) consumers always make only the minimum  
5           payment throughout the life of the plan;

6           (4) consumers are aware that making only min-  
7           imum payments will increase the cost and repayment  
8           period of an open-end loan; and

9           (5) the availability of low minimum payment  
10          options is a cause of consumers experiencing finan-  
11          cial difficulty.

12         (f) REPORT TO CONGRESS.—Before the end of the  
13         2-year period beginning on the date of the enactment of  
14         this Act, the Board shall submit to Congress a report con-  
15         taining the findings of the Board in connection with the  
16         study required under subsection (e).

17         (g) REGULATIONS.—The Board shall, by regulation  
18         promulgated pursuant to its authority under the Truth in  
19         Lending Act, require additional disclosures to consumers  
20         regarding minimum payment features, including periodic  
21         statement disclosures, if the Board determines that such  
22         disclosures are necessary based on its findings. Any such  
23         regulations promulgated by the Board shall not take effect  
24         earlier than January 1, 2002.

1   **SEC. 113. PROTECTION OF SAVINGS EARMARKED FOR THE**  
2                   **POSTSECONDARY EDUCATION OF CHILDREN.**

3       Section 522 of title 11, United States Code, is  
4 amended—

5           (1) in subsection (b)(2)—

6               (A) in subparagraph (A) by striking “and”  
7               at the end;

8               (B) in subparagraph (B) by striking the  
9               period at the end and inserting “; and”; and

10              (C) by adding at the end the following:

11              “(C) except as provided in paragraph (n), funds  
12              placed in an education individual retirement account  
13              (as defined in section 530(b)(1) of the Internal Rev-  
14              enue Code of 1986) not less than 365 days before  
15              the date of entry of the order of relief but only to  
16              the extent such funds—

17                   “(i) are not pledged or promised to any en-  
18                   tity in connection with any extension of credit;  
19                   and

20                   “(ii) are not excess contributions (as de-  
21                   scribed in section 4973(e) of the Internal Reve-  
22                   nue Code of 1986).”; and

23              (2) by adding at the end the following:

24              “(n) For purposes of subsection (b)(3)(C), funds  
25              placed in an education individual retirement account shall  
26              not be exempt under this subsection—

1           “(1) unless the designated beneficiary of such  
2           account was a dependent child of the debtor for the  
3           taxable year for which the funds were placed in such  
4           account; and

5           “(2) to the extent such funds exceed—

6                   “(A) \$50,000 in the aggregate in all such  
7           accounts having the same designated bene-  
8           ficiary; or

9                   “(B) \$100,000 in the aggregate in all such  
10          accounts attributable to all such dependent chil-  
11          dren of the debtor.”.

12 **SEC. 114. EFFECT OF DISCHARGE.**

13          Section 524 of title 11, United States Code, is  
14          amended by adding at the end the following:

15          “(i) The willful failure of a creditor to credit pay-  
16          ments received under a plan confirmed under this title (in-  
17          cluding a plan of reorganization confirmed under chapter  
18          11 of this title) in the manner required by the plan (in-  
19          cluding crediting the amounts required under the plan)  
20          shall constitute a violation of any injunction under sub-  
21          section (a)(2) which has arisen at the time of the failure.

22          “(j)(1) An individual who is injured by the willful fail-  
23          ure of a creditor to comply with the requirements for a  
24          reaffirmation agreement under subsections (c) and (d), or

1 by any willful violation of the injunction under subsection  
2 (a)(2), shall be entitled to recover—

3 “(A) the greater of—

4 “(i) the amount of actual damages; or

5 “(ii) \$1,000; and

6 “(B) costs and attorneys’ fees.

7 “(2) An action to recover for a violation specified in  
8 paragraph (1) may not be brought as a class action.”.

9 **SEC. 115. LIMITING TRUSTEE LIABILITY.**

10 (a) QUALIFICATION OF TRUSTEE.—Section 322 of  
11 title 11, United States Code, is amended—

12 (1) in subsection (a) by adding at the end the  
13 following:

14 “The trustee in a case under this title is not liable  
15 personally or on such trustee’s bond for acts taken  
16 within the scope of the trustee’s duties or authority  
17 as delineated by other sections of this title or by  
18 order of the court, except to the extent that the  
19 trustee acted with gross negligence. Gross negligence  
20 shall be defined as reckless indifference or deliberate  
21 disregard of the trustee’s fiduciary duty.”; and

22 (2) in subsection (c) by inserting “for any acts  
23 within the scope of the trustee’s authority defined in  
24 subsection (a)” before the period at the end.

1 (b) ROLE AND CAPACITY OF TRUSTEE.—Section 323  
2 of title 11, United States Code, is amended—

3 (1) in subsection (b) by inserting at the end the  
4 following: “in the trustee’s official capacity as rep-  
5 resentative of the estate” before the period at the  
6 end; and

7 (2) by adding at the end the following:

8 “(c) The trustee in a case under this title may not  
9 be sued, either personally, in a representative capacity, or  
10 against the trustee’s bond in favor of the United States—

11 “(1) for acts taken in furtherance of the trust-  
12 ee’s duties or authority in a case in which the debtor  
13 is subsequently determined to be ineligible for relief  
14 under the chapter in which the trustee was ap-  
15 pointed; or

16 “(2) for the dissemination of statistics and  
17 other information regarding a case or cases, unless  
18 the trustee has actual knowledge that the informa-  
19 tion is false.

20 “(d) The trustee in a case under this title may not  
21 be sued in a personal capacity without leave of the bank-  
22 ruptcy court in which the case is pending.”.



1   **SEC. 116. REINFORCE THE FRESH START.**

2           (a) RESTORATION OF AN EFFECTIVE DISCHARGE.—

3   Section 523(a)(17) of title 11, United States Code, is  
4   amended—

5           (1) by striking “by a court” and inserting “by  
6   any court”,

7           (2) by striking “section 1915(b) or (f)” and in-  
8   serting “subsection (b) or (f)(2) of section 1915”,  
9   and

10          (3) by inserting “(or a similar non-Federal  
11   law)” after “title 28” each place it appears.

12   **SEC. 117. DISCOURAGING BAD FAITH REPEAT FILINGS.**

13   Section 362(c) of title 11, United States Code, is  
14   amended—

15          (1) in paragraph (1) by striking “and” at the  
16   end;

17          (2) in paragraph (2) by striking the period at  
18   the end and inserting a semicolon; and

19          (3) by adding at the end the following new  
20   paragraphs:

21           “(3) If a single or joint case is filed by or  
22   against an individual debtor under chapter 7, 11, or  
23   13 (other than a case refiled under a chapter other  
24   than chapter 7 after dismissal under section 707(b)  
25   of this title), and if a single or joint case of the debt-  
26   or was pending within the previous 1-year period but

1       was dismissed, the stay under subsection (a) with re-  
2       spect to any action taken with respect to a debt or  
3       property securing such debt or with respect to any  
4       lease will terminate with respect to the debtor on the  
5       30th day after the filing of the later case. Upon mo-  
6       tion by a party in interest for continuation of the  
7       automatic stay and upon notice and a hearing, the  
8       court may extend the stay in particular cases as to  
9       any or all creditors (subject to such conditions or  
10      limitations as the court may then impose) after no-  
11      tice and a hearing completed before the expiration of  
12      the 30-day period only if the party in interest dem-  
13      onstrates that the filing of the later case is in good  
14      faith as to the creditors to be stayed. A case is pre-  
15      sumptively filed not in good faith (but such pre-  
16      sumption may be rebutted by clear and convincing  
17      evidence to the contrary)—

18               “(A) as to all creditors if—

19                       “(i) more than 1 previous case under  
20                       any of chapter 7, 11, or 13 in which the  
21                       individual was a debtor was pending within  
22                       such 1-year period;

23                       “(ii) a previous case under any of  
24                       chapters 7, 11, or 13 in which the individ-  
25                       ual was a debtor was dismissed within

1           such 1-year period, after the debtor failed  
2           to file or amend the petition or other docu-  
3           ments as required by this title or the court  
4           without substantial excuse (but mere inad-  
5           vertence or negligence shall not be sub-  
6           stantial excuse unless the dismissal was  
7           caused by the negligence of the debtor's at-  
8           torney), failed to provide adequate protec-  
9           tion as ordered by the court, or failed to  
10          perform the terms of a plan confirmed by  
11          the court; or

12                 “(iii) there has not been a substantial  
13           change in the financial or personal affairs  
14           of the debtor since the dismissal of the  
15           next most previous case under any of chap-  
16           ters 7, 11, or 13 of this title, or there is  
17           not any other reason to conclude that the  
18           later case will be concluded, if a case under  
19           chapter 7 of this title, with a discharge,  
20           and if a chapter 11 or 13 case, a con-  
21           firmed plan which will be fully performed;

22                 “(B) as to any creditor that commenced an  
23           action under subsection (d) in a previous case  
24           in which the individual was a debtor if, as of  
25           the date of dismissal of such case, that action

1           was still pending or had been resolved by termi-  
2           nating, conditioning, or limiting the stay as to  
3           actions of such creditor.

4           “(4) If a single or joint case is filed by or  
5           against an individual debtor under this title (other  
6           than a case refiled under a chapter other than chap-  
7           ter 7 after a dismissal under section 707(b) of this  
8           title), and if 2 or more single or joint cases of the  
9           debtor were pending within the previous year but  
10          were dismissed, the stay under subsection (a) will  
11          not go into effect upon the filing of the later case.  
12          On request of a party in interest, the court shall  
13          promptly enter an order confirming that no stay is  
14          in effect. If a party in interest requests within 30  
15          days of the filing of the later case, the court may  
16          order the stay to take effect in the case as to any  
17          or all creditors (subject to such conditions or limita-  
18          tions as the court may impose), after notice and  
19          hearing, only if the party in interest demonstrates  
20          that the filing of the later case is in good faith as  
21          to the creditors to be stayed. A stay imposed pursu-  
22          ant to the preceding sentence will be effective on the  
23          date of entry of the order allowing the stay to go  
24          into effect. A case is presumptively not filed in good

1 faith (but such presumption may be rebutted by  
2 clear and convincing evidence to the contrary)—

3 “(A) as to all creditors if—

4 “(i) 2 or more previous cases under  
5 this title in which the individual was a  
6 debtor were pending within the 1-year pe-  
7 riod;

8 “(ii) a previous case under this title in  
9 which the individual was a debtor was dis-  
10 missed within the time period stated in  
11 this paragraph after the debtor failed to  
12 file or amend the petition or other docu-  
13 ments as required by this title or the court  
14 without substantial excuse (but mere inad-  
15 vertence or negligence shall not be sub-  
16 stantial excuse unless the dismissal was  
17 caused by the negligence of the debtor’s at-  
18 torney), failed to provide adequate protec-  
19 tion as ordered by the court, or failed to  
20 perform the terms of a plan confirmed by  
21 the court; or

22 “(iii) there has not been a substantial  
23 change in the financial or personal affairs  
24 of the debtor since the dismissal of the  
25 next most previous case under this title, or

1           there is not any other reason to conclude  
2           that the later case will be concluded, if a  
3           case under chapter 7, with a discharge,  
4           and if a case under chapter 11 or 13, with  
5           a confirmed plan that will be fully per-  
6           formed; or

7           “(B) as to any creditor that commenced an  
8           action under subsection (d) in a previous case  
9           in which the individual was a debtor if, as of  
10          the date of dismissal of such case, such action  
11          was still pending or had been resolved by termi-  
12          nating, conditioning, or limiting the stay as to  
13          action of such creditor.”.

14   **SEC. 118. CURBING ABUSIVE FILINGS.**

15          (a) IN GENERAL.—Section 362(d) of title 11, United  
16   States Code, is amended—

17           (1) in paragraph (2), by striking “or” at the  
18   end;

19           (2) in paragraph (3), by striking the period at  
20   the end and inserting “; or”; and

21           (3) by adding at the end the following:

22           “(4) with respect to a stay of an act against  
23   real property under subsection (a), by a creditor  
24   whose claim is secured by an interest in such real  
25   estate, if the court finds that the filing of the bank-

1       ruptcy petition was part of a scheme to delay,  
2       hinder, and defraud creditors that involved either—

3               “(A) transfer of all or part ownership of,  
4               or other interest in, the real property without  
5               the consent of the secured creditor or court ap-  
6               proval; or

7               “(B) multiple bankruptcy filings affecting  
8               the real property.

9   If recorded in compliance with applicable State laws gov-  
10   erning notices of interests or liens in real property, an  
11   order entered pursuant to this subsection shall be binding  
12   in any other case under this title purporting to affect the  
13   real property filed not later than 2 years after that record-  
14   ing, except that a debtor in a subsequent case may move  
15   for relief from such order based upon changed cir-  
16   cumstances or for good cause shown, after notice and a  
17   hearing. Any Federal, State, or local governmental unit  
18   which accepts notices of interests or liens in real property  
19   shall accept any certified copy of an order described in  
20   this subsection for indexing and recording.”.

21       (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
22   United States Code, is amended—

23               (1) in paragraph (17), by striking “or” at the  
24       end;

1           (2) in paragraph (18) by striking the period at  
2           the end and inserting a semicolon; and

3           (3) by inserting after paragraph (18) the fol-  
4           lowing:

5           “(19) under subsection (a), of any act to en-  
6           force any lien against or security interest in real  
7           property following the entry of an order under sec-  
8           tion 362(d)(4) of this title as to that property in any  
9           prior bankruptcy case for a period of 2 years after  
10          entry of such an order. The debtor in a subsequent  
11          case, however, may move the court for relief from  
12          such order based upon changed circumstances or for  
13          other good cause shown (consistent with the stand-  
14          ards for good faith in subsection (c)), after notice  
15          and a hearing; or

16          “(20) under subsection (a), of any act to en-  
17          force any lien against or security interest in real  
18          property—

19                 “(A) if the debtor is ineligible under sec-  
20                 tion 109(g) of this title to be a debtor in a  
21                 bankruptcy case; or

22                 “(B) if the bankruptcy case was filed in  
23                 violation of a bankruptcy court order in a prior  
24                 bankruptcy case prohibiting the debtor from  
25                 being a debtor in another bankruptcy case.”.



1   **SEC. 119. DEBTOR RETENTION OF PERSONAL PROPERTY**  
2                   **SECURITY.**

3           Title 11, United States Code, is amended—

4               (1) in section 521—

5                   (A) in paragraph (4) by striking “, and”  
6                   at the end and inserting a semicolon;

7                   (B) in paragraph (5) by striking the period  
8                   at the end and inserting “; and”; and

9                   (C) by adding at the end the following:

10               “(6) in an individual case under chapter 7 of  
11               this title, not retain possession of personal property  
12               as to which a creditor has an allowed claim for the  
13               purchase price secured in whole or in part by an in-  
14               terest in that personal property unless, in the case  
15               of an individual debtor, the debtor takes 1 of the fol-  
16               lowing actions within 45 days after the first meeting  
17               of creditors under section 341(a)—

18                   “(A) enters into an agreement with the  
19                   creditor pursuant to section 524(c) of this title  
20                   with respect to the claim secured by such prop-  
21                   erty; or

22                   “(B) redeems such property from the secu-  
23                   rity interest pursuant to section 722 of this  
24                   title.

25               “If the debtor fails to so act within the 45-day pe-  
26               riod, the stay under section 362(a) of this title is

1 terminated with respect to the personal property of  
2 the estate or of the debtor which is affected, such  
3 property shall no longer be property of the estate,  
4 and the creditor may take whatever action as to  
5 such property as is permitted by applicable nonbank-  
6 ruptcy law, unless the court determines on the mo-  
7 tion of the trustee brought before the expiration of  
8 such 45-day period, and after notice and a hearing,  
9 that such property is of consequential value or bene-  
10 fit to the estate, orders appropriate adequate protec-  
11 tion of the creditor's interest, and orders the debtor  
12 to deliver any collateral in the debtor's possession to  
13 the trustee.”; and

14 (2) in section 722 by inserting “in full at the  
15 time of redemption” before the period at the end.

16 **SEC. 120. RELIEF FROM THE AUTOMATIC STAY WHEN THE**  
17 **DEBTOR DOES NOT COMPLETE INTENDED**  
18 **SURRENDER OF CONSUMER DEBT COLLAT-**  
19 **ERAL.**

20 Title 11, United States Code, is amended as  
21 follows—

22 (1) in section 362—

23 (A) by striking “(e), and (f)” in subsection  
24 (c) and inserting in lieu thereof “(e), (f), and  
25 (h)”;

1 (B) by redesignating subsection (h) as sub-  
2 section (i) and by inserting after subsection (g)  
3 the following:

4 “(h) In an individual case pursuant to chapter 7, 11,  
5 or 13 the stay provided by subsection (a) is terminated  
6 with respect to personal property of the estate or of the  
7 debtor securing in whole or in part a claim, or subject  
8 to an unexpired lease, and such personal property shall  
9 no longer be property of the estate if the debtor fails with-  
10 in the applicable time set by section 521(a)(2) of this  
11 title—

12 “(1) to file timely any statement of intention  
13 required under section 521(a)(2) of this title with  
14 respect to that property or to indicate therein that  
15 the debtor will either surrender the property or re-  
16 tain it and, if retaining it, either redeem the prop-  
17 erty pursuant to section 722 of this title, reaffirm  
18 the debt it secures pursuant to section 524(c) of this  
19 title, or assume the unexpired lease pursuant to sec-  
20 tion 365(p) of this title if the trustee does not do  
21 so, as applicable; or

22 “(2) to take timely the action specified in that  
23 statement of intention, as it may be amended before  
24 expiration of the period for taking action, unless the  
25 statement of intention specifies reaffirmation and

1       the creditor refuses to reaffirm on the original con-  
2       tract terms;  
3       unless the court determines on the motion of the trustee  
4       filed before the expiration of the applicable time set by  
5       section 521(a)(2), and after notice and a hearing, that  
6       such property is of consequential value or benefit to the  
7       estate, orders appropriate adequate protection of the  
8       creditor's interest, and orders the debtor to deliver any  
9       collateral in the debtor's possession to the trustee. If the  
10      court does not so determine an order, the stay shall termi-  
11      nate upon the conclusion of the proceeding on the mo-  
12      tion.”; and

13               (2) in section 521, as amended by sections 603  
14      and 604—

15                   (A) in paragraph (2) by striking “con-  
16                   sumer”;

17                   (B) in paragraph (2)(B)—

18                       (i) by striking “forty-five days after  
19                       the filing of a notice of intent under this  
20                       section” and inserting “30 days after the  
21                       first date set for the meeting of creditors  
22                       under section 341(a) of this title”; and

23                       (ii) by striking “forty-five day” the  
24                       second place it appears and inserting “30-  
25                       day”;

1 (C) in paragraph (2)(C) by inserting “ex-  
2 cept as provided in section 362(h) of this title”  
3 before the semicolon; and

4 (D) by inserting after subsection (b) the  
5 following:

6 “(c) If the debtor fails timely to take the action speci-  
7 fied in subsection (a)(6) of this section, or in paragraphs  
8 (1) and (2) of section 362(h) of this title, with respect  
9 to property which a lessor or bailor owns and has leased,  
10 rented, or bailed to the debtor or as to which a creditor  
11 holds a security interest not otherwise voidable under sec-  
12 tion 522(f), 544, 545, 547, 548, or 549 of this title, noth-  
13 ing in this title shall prevent or limit the operation of a  
14 provision in the underlying lease or agreement which has  
15 the effect of placing the debtor in default under such lease  
16 or agreement by reason of the occurrence, pendency, or  
17 existence of a proceeding under this title or the insolvency  
18 of the debtor. Nothing in this subsection shall be deemed  
19 to justify limiting such a provision in any other cir-  
20 cumstance.”.

21 **SEC. 121. GIVING SECURED CREDITORS FAIR TREATMENT**

22 **IN CHAPTER 13.**

23 Section 1325(a)(5)(B)(i) of title 11, United States  
24 Code, is amended to read as follows:

1           “(i) the plan provides that the holder of  
2           such claim retain the lien securing such claim  
3           until the earlier of payment of the underlying  
4           debt determined under nonbankruptcy law or  
5           discharge under section 1328 of this title, and  
6           that if the case under this chapter is dismissed  
7           or converted without completion of the plan,  
8           such lien shall also be retained by such holder  
9           to the extent recognized by applicable nonbank-  
10          ruptcy law; and”.

11 **SEC. 122. RESTRAINING ABUSIVE PURCHASES ON SECURED**  
12 **CREDIT.**

13       Section 506 of title 11, United States Code, is  
14 amended by adding at the end the following:

15       “(e) In an individual case under chapter 7, 11, 12,  
16 or 13—

17           “(1) subsection (a) shall not apply to an al-  
18       lowed claim to the extent attributable in whole or in  
19       part to the purchase price of personal property ac-  
20       quired by the debtor within 5 years of the filing of  
21       the petition, except for the purpose of applying para-  
22       graph (3) of this subsection;

23           “(2) if such allowed claim attributable to the  
24       purchase price is secured only by the personal prop-  
25       erty so acquired, the value of the personal property

1       and the amount of the allowed secured claim shall  
2       be the sum of the unpaid principal balance of the  
3       purchase price and accrued and unpaid interest and  
4       charges at the contract rate;

5           “(3) if such allowed claim attributable to the  
6       purchase price is secured by the personal property so  
7       acquired and other property, the value of the secu-  
8       rity may be determined under subsection (a), but the  
9       value of the security and the amount of the allowed  
10      secured claim shall be not less than the unpaid prin-  
11      cipal balance of the purchase price of the personal  
12      property acquired and unpaid interest and charges  
13      at the contract rate; and

14           “(4) in any subsequent case under this title  
15      that is filed by or against the debtor in the 2-year  
16      period beginning on the date the petition is filed in  
17      the original case, the value of the personal property  
18      and the amount of the allowed secured claim shall  
19      be deemed to be not less than the amount provided  
20      under paragraphs (2) and (3) less any payments ac-  
21      tually received.”.

22   **SEC. 123. FAIR VALUATION OF COLLATERAL.**

23       Section 506(a) of title 11, United States Code, is  
24      amended by adding at the end the following:

1 “In the case of an individual debtor under chapters 7 and  
2 13, such value with respect to personal property securing  
3 an allowed claim shall be determined based on the replace-  
4 ment value of such property as of the date of filing the  
5 petition without deduction for costs of sale or marketing.  
6 With respect to property acquired for personal, family, or  
7 household purpose, replacement value shall mean the price  
8 a retail merchant would charge for property of that kind  
9 considering the age and condition of the property at the  
10 time value is determined.”.

11 **SEC. 124. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

12 Section 522(b)(2)(A) of title 11, United States Code,  
13 is amended—

14 (1) by striking “180” and inserting “730”; and

15 (2) by striking “, or for a longer portion of  
16 such 180-day period than in any other place” and  
17 inserting “or if the debtor’s domicile has not been  
18 located at a single State for such 730-day period,  
19 the place in which the debtor’s domicile was located  
20 for 180 days immediately preceding the 730-day pe-  
21 riod or for a longer portion of such 180-day period  
22 than in any other place”.



1 **SEC. 125. RESTRICTIONS ON CERTAIN EXEMPT PROPERTY**  
2 **OBTAINED THROUGH FRAUD.**

3 Section 522 of title 11, United States Code, as  
4 amended by section 113, is amended—

5 (1) in subsection (b)(2)(A) by inserting “sub-  
6 ject to subsection (o),” before “any property”; and

7 (2) by adding at the end the following:

8 “(o) For purposes of subsection (b)(3)(A) and not-  
9 withstanding subsection (a), the value of an interest in—

10 “(1) real or personal property that the debtor  
11 or a dependent of the debtor uses as a residence;

12 “(2) a cooperative that owns property that the  
13 debtor or a dependent of the debtor uses as a resi-  
14 dence; or

15 “(3) a burial plot for the debtor or a dependent  
16 of the debtor;

17 shall be reduced to the extent such value is attributable  
18 to any portion of any property that the debtor disposed  
19 of in the 730-day period ending of the date of the filing  
20 of the petition, with the intent to hinder, delay, or defraud  
21 a creditor and that the debtor could not exempt, or that  
22 portion that the debtor could not exempt, under subsection  
23 (b) if on such date the debtor had held the property so  
24 disposed of.”.

1   **SEC. 126. ROLLING STOCK EQUIPMENT.**

2           (a) IN GENERAL.—Section 1168 of title 11, United  
3 States Code, is amended to read as follows:

4   **“§ 1168. Rolling stock equipment**

5           “(a)(1) The right of a secured party with a security  
6 interest in or of a lessor or conditional vendor of equip-  
7 ment described in paragraph (2) to take possession of such  
8 equipment in compliance with an equipment security  
9 agreement, lease, or conditional sale contract, and to en-  
10 force any of its other rights or remedies under such secu-  
11 rity agreement, lease, or conditional sale contract, to sell,  
12 lease, or otherwise retain or dispose of such equipment,  
13 is not limited or otherwise affected by any other provision  
14 of this title or by any power of the court, except that the  
15 right to take possession and enforce those other rights and  
16 remedies shall be subject to section 362 of this title, if—

17           “(A) before the date that is 60 days after the  
18 date of commencement of a case under this chapter,  
19 the trustee, subject to the court’s approval, agrees to  
20 perform all obligations of the debtor under such se-  
21 curity agreement, lease, or conditional sale contract;  
22 and

23           “(B) any default, other than a default of a kind  
24 described in section 365(b)(2) of this title, under  
25 such security agreement, lease, or conditional sale  
26 contract—

1           “(i) that occurs before the date of com-  
2           mencement of the case and is an event of de-  
3           fault therewith is cured before the expiration of  
4           such 60-day period;

5           “(ii) that occurs or becomes an event of  
6           default after the date of commencement of the  
7           case and before the expiration of such 60-day  
8           period is cured before the later of—

9           “(I) the date that is 30 days after the  
10          date of the default or event of the default;  
11          or

12          “(II) the expiration of such 60-day  
13          period; and

14          “(iii) that occurs on or after the expiration  
15          of such 60-day period is cured in accordance  
16          with the terms of such security agreement,  
17          lease, or conditional sale contract, if cure is per-  
18          mitted under that agreement, lease, or condi-  
19          tional sale contract.

20          “(2) The equipment described in this paragraph—

21          “(A) is rolling stock equipment or accessories  
22          used on rolling stock equipment, including super-  
23          structures or racks, that is subject to a security in-  
24          terest granted by, leased to, or conditionally sold to  
25          a debtor; and

1           “(B) includes all records and documents relat-  
2           ing to such equipment that are required, under the  
3           terms of the security agreement, lease, or conditional  
4           sale contract, that is to be surrendered or returned  
5           by the debtor in connection with the surrender or re-  
6           turn of such equipment.

7           “(3) Paragraph (1) applies to a secured party, lessor,  
8           or conditional vendor acting in its own behalf or acting  
9           as trustee or otherwise in behalf of another party.

10          “(b) The trustee and the secured party, lessor, or  
11          conditional vendor whose right to take possession is pro-  
12          tected under subsection (a) may agree, subject to the  
13          court’s approval, to extend the 60-day period specified in  
14          subsection (a)(1).

15          “(c)(1) In any case under this chapter, the trustee  
16          shall immediately surrender and return to a secured party,  
17          lessor, or conditional vendor, described in subsection  
18          (a)(1), equipment described in subsection (a)(2), if at any  
19          time after the date of commencement of the case under  
20          this chapter such secured party, lessor, or conditional ven-  
21          dor is entitled pursuant to subsection (a)(1) to take pos-  
22          session of such equipment and makes a written demand  
23          for such possession of the trustee.

24          “(2) At such time as the trustee is required under  
25          paragraph (1) to surrender and return equipment de-

1 scribed in subsection (a)(2), any lease of such equipment,  
2 and any security agreement or conditional sale contract  
3 relating to such equipment, if such security agreement or  
4 conditional sale contract is an executory contract, shall be  
5 deemed rejected.

6 “(d) With respect to equipment first placed in service  
7 on or prior to October 22, 1994, for purposes of this  
8 section—

9 “(1) the term ‘lease’ includes any written agree-  
10 ment with respect to which the lessor and the debt-  
11 or, as lessee, have expressed in the agreement or in  
12 a substantially contemporaneous writing that the  
13 agreement is to be treated as a lease for Federal in-  
14 come tax purposes; and

15 “(2) the term ‘security interest’ means a pur-  
16 chase-money equipment security interest.

17 “(e) With respect to equipment first placed in service  
18 after October 22, 1994, for purposes of this section, the  
19 term ‘rolling stock equipment’ includes rolling stock equip-  
20 ment that is substantially rebuilt and accessories used on  
21 such equipment.”.

22 (b) AIRCRAFT EQUIPMENT AND VESSELS.—Section  
23 1110 of title 11, United States Code, is amended to read  
24 as follows:

1   **“§ 1110. Aircraft equipment and vessels**

2           “(a)(1) Except as provided in paragraph (2) and sub-  
3   ject to subsection (b), the right of a secured party with  
4   a security interest in equipment described in paragraph  
5   (3), or of a lessor or conditional vendor of such equipment,  
6   to take possession of such equipment in compliance with  
7   a security agreement, lease, or conditional sale contract,  
8   and to enforce any of its other rights or remedies, under  
9   such security agreement, lease, or conditional sale con-  
10   tract, to sell, lease, or otherwise retain or dispose of such  
11   equipment, is not limited or otherwise affected by any  
12   other provision of this title or by any power of the court.

13           “(2) The right to take possession and to enforce the  
14   other rights and remedies described in paragraph (1) shall  
15   be subject to section 362 of this title if—

16           “(A) before the date that is 60 days after the  
17   date of the order for relief under this chapter, the  
18   trustee, subject to the approval of the court, agrees  
19   to perform all obligations of the debtor under such  
20   security agreement, lease, or conditional sale con-  
21   tract; and

22           “(B) any default, other than a default of a kind  
23   specified in section 365(b)(2) of this title, under  
24   such security agreement, lease, or conditional sale  
25   contract—

1           “(i) that occurs before the date of the  
2           order is cured before the expiration of such 60-  
3           day period;

4           “(ii) that occurs after the date of the order  
5           and before the expiration of such 60-day period  
6           is cured before the later of—

7                   “(I) the date that is 30 days after the  
8                   date of the default; or

9                   “(II) the expiration of such 60-day  
10                  period; and

11           “(iii) that occurs on or after the expiration  
12           of such 60-day period is cured in compliance  
13           with the terms of such security agreement,  
14           lease, or conditional sale contract, if a cure is  
15           permitted under that agreement, lease, or con-  
16           tract.

17           “(3) The equipment described in this paragraph—

18                   “(A) is—

19                   “(i) an aircraft, aircraft engine, propeller,  
20                   appliance, or spare part (as defined in section  
21                   40102 of title 49) that is subject to a security  
22                   interest granted by, leased to, or conditionally  
23                   sold to a debtor that, at the time such trans-  
24                   action is entered into, holds an air carrier oper-  
25                   ating certificate issued pursuant to chapter 447

1 of title 49 for aircraft capable of carrying 10 or  
2 more individuals or 6,000 pounds or more of  
3 cargo; or

4 “(ii) a documented vessel (as defined in  
5 section 30101(1) of title 46) that is subject to  
6 a security interest granted by, leased to, or con-  
7 ditionally sold to a debtor that is a water car-  
8 rier that, at the time such transaction is en-  
9 tered into, holds a certificate of public conven-  
10 ience and necessity or permit issued by the De-  
11 partment of Transportation; and

12 “(B) includes all records and documents relat-  
13 ing to such equipment that are required, under the  
14 terms of the security agreement, lease, or conditional  
15 sale contract, to be surrendered or returned by the  
16 debtor in connection with the surrender or return of  
17 such equipment.

18 “(4) Paragraph (1) applies to a secured party, lessor,  
19 or conditional vendor acting in its own behalf or acting  
20 as trustee or otherwise in behalf of another party.

21 “(b) The trustee and the secured party, lessor, or  
22 conditional vendor whose right to take possession is pro-  
23 tected under subsection (a) may agree, subject to the ap-  
24 proval of the court, to extend the 60-day period specified  
25 in subsection (a)(1).



1       “(c)(1) In any case under this chapter, the trustee  
2 shall immediately surrender and return to a secured party,  
3 lessor, or conditional vendor, described in subsection  
4 (a)(1), equipment described in subsection (a)(3), if at any  
5 time after the date of the order for relief under this chap-  
6 ter such secured party, lessor, or conditional vendor is en-  
7 titled pursuant to subsection (a)(1) to take possession of  
8 such equipment and makes a written demand for such pos-  
9 session to the trustee.

10       “(2) At such time as the trustee is required under  
11 paragraph (1) to surrender and return equipment de-  
12 scribed in subsection (a)(3), any lease of such equipment,  
13 and any security agreement or conditional sale contract  
14 relating to such equipment, if such security agreement or  
15 conditional sale contract is an executory contract, shall be  
16 deemed rejected.

17       “(d) With respect to equipment first placed in service  
18 on or before October 22, 1994, for purposes of this  
19 section—

20               “(1) the term ‘lease’ includes any written agree-  
21 ment with respect to which the lessor and the debt-  
22 or, as lessee, have expressed in the agreement or in  
23 a substantially contemporaneous writing that the  
24 agreement is to be treated as a lease for Federal in-  
25 come tax purposes; and

1           “(2) the term ‘security interest’ means a pur-  
2       chase-money equipment security interest.”.

3   **SEC. 127. DISCHARGE UNDER CHAPTER 13.**

4       Section 1328(a) of title 11, United States Code, is  
5   amended by striking paragraphs (1) through (3) and in-  
6   serting the following:

7           “(1) provided for under section 1322(b)(5) of  
8       this title;

9           “(2) of the kind specified in paragraph (2), (4),  
10       (3)(B), (5), (8), or (9) of section 523(a) of this title;

11          “(3) for restitution, or a criminal fine, included  
12       in a sentence on the debtor’s conviction of a crime;  
13       or

14          “(4) for restitution, or damages, awarded in a  
15       civil action against the debtor as a result of willful  
16       or malicious injury by the debtor that caused per-  
17       sonal injury to an individual or the death of an indi-  
18       vidual.”.

19   **SEC. 128. BANKRUPTCY JUDGESHIPS.**

20       (a) SHORT TITLE.—This section may be cited as the  
21   “Bankruptcy Judgeship Act of 1999”.

22       (b) TEMPORARY JUDGESHIPS.—

23           (1) APPOINTMENTS.—The following judgeship  
24       positions shall be filled in the manner prescribed in  
25       section 152(a)(1) of title 28, United States Code, for

1       the appointment of bankruptcy judges provided for  
2       in section 152(a)(2) of such title:

3               (A) One additional bankruptcy judgeship  
4       for the eastern district of California.

5               (B) Four additional bankruptcy judgeships  
6       for the central district of California.

7               (C) One additional bankruptcy judgeship  
8       for the southern district of Florida.

9               (D) Two additional bankruptcy judgeships  
10       for the district of Maryland.

11              (E) One additional bankruptcy judgeship  
12       for the eastern district of Michigan.

13              (F) One additional bankruptcy judgeship  
14       for the southern district of Mississippi.

15              (G) One additional bankruptcy judgeship  
16       for the district of New Jersey.

17              (H) One additional bankruptcy judgeship  
18       for the eastern district of New York.

19              (I) One additional bankruptcy judgeship  
20       for the northern district of New York.

21              (J) One additional bankruptcy judgeship  
22       for the southern district of New York.

23              (K) One additional bankruptcy judgeship  
24       for the eastern district of Pennsylvania.

1                   (L) One additional bankruptcy judgeship  
2                   for the middle district of Pennsylvania.

3                   (M) One additional bankruptcy judgeship  
4                   for the western district of Tennessee.

5                   (N) One additional bankruptcy judgeship  
6                   for the eastern district of Virginia.

7                   (2) VACANCIES.—The first vacancy occurring in  
8                   the office of a bankruptcy judge in each of the judi-  
9                   cial districts set forth in paragraph (1) that—

10                   (A) results from the death, retirement, res-  
11                   ignation, or removal of a bankruptcy judge; and

12                   (B) occurs 5 years or more after the ap-  
13                   pointment date of a bankruptcy judge ap-  
14                   pointed under paragraph (1);

15                   shall not be filled.

16                   (c) EXTENSIONS.—

17                   (1) IN GENERAL.—The temporary bankruptcy  
18                   judgeship positions authorized for the northern dis-  
19                   trict of Alabama, the district of Delaware, the dis-  
20                   trict of Puerto Rico, the district of South Carolina,  
21                   and the eastern district of Tennessee under section  
22                   3(a) (1), (3), (7), (8), and (9) of the Bankruptcy  
23                   Judgeship Act of 1992 (28 U.S.C. 152 note) are ex-  
24                   tended until the first vacancy occurring in the office  
25                   of a bankruptcy judge in the applicable district re-

1 sulting from the death, retirement, resignation, or  
2 removal of a bankruptcy judge and occurring—

3 (A) 8 years or more after November 8,  
4 1993, with respect to the northern district of  
5 Alabama;

6 (B) 10 years or more after October 28,  
7 1993, with respect to the district of Delaware;

8 (C) 8 years or more after August 29,  
9 1994, with respect to the district of Puerto  
10 Rico;

11 (D) 8 years or more after June 27, 1994,  
12 with respect to the district of South Carolina;  
13 and

14 (E) 8 years or more after November 23,  
15 1993, with respect to the eastern district of  
16 Tennessee.

17 (2) APPLICABILITY OF OTHER PROVISIONS.—

18 All other provisions of section 3 of the Bankruptcy  
19 Judgeship Act of 1992 remain applicable to such  
20 temporary judgeship position.

21 (d) TECHNICAL AMENDMENT.—The first sentence of  
22 section 152(a)(1) of title 28, United States Code, is  
23 amended to read as follows: “Each bankruptcy judge to  
24 be appointed for a judicial district as provided in para-  
25 graph (2) shall be appointed by the United States court

1 of appeals for the circuit in which such district is lo-  
2 cated.”.

3 (e) TRAVEL EXPENSES OF BANKRUPTCY JUDGES.—

4 Section 156 of title 28, United States Code, is amended  
5 by adding at the end the following new subsection:

6 “(g)(1) In this subsection, the term ‘travel  
7 expenses’—

8 “(A) means the expenses incurred by a bank-  
9 ruptcy judge for travel that is not directly related to  
10 any case assigned to such bankruptcy judge; and

11 “(B) shall not include the travel expenses of a  
12 bankruptcy judge if—

13 “(i) the payment for the travel expenses is  
14 paid by such bankruptcy judge from the per-  
15 sonal funds of such bankruptcy judge; and

16 “(ii) such bankruptcy judge does not re-  
17 ceive funds (including reimbursement) from the  
18 United States or any other person or entity for  
19 the payment of such travel expenses.

20 “(2) Each bankruptcy judge shall annually submit  
21 the information required under paragraph (3) to the chief  
22 bankruptcy judge for the district in which the bankruptcy  
23 judge is assigned.

24 “(3)(A) Each chief bankruptcy judge shall submit an  
25 annual report to the Director of the Administrative Office

1 of the United States Courts on the travel expenses of each  
2 bankruptcy judge assigned to the applicable district (in-  
3 cluding the travel expenses of the chief bankruptcy judge  
4 of such district).

5 “(B) The annual report under this paragraph shall  
6 include—

7 “(i) the travel expenses of each bankruptcy  
8 judge, with the name of the bankruptcy judge to  
9 whom the travel expenses apply;

10 “(ii) a description of the subject matter and  
11 purpose of the travel relating to each travel expense  
12 identified under clause (i), with the name of the  
13 bankruptcy judge to whom the travel applies; and

14 “(iii) the number of days of each travel de-  
15 scribed under clause (ii), with the name of the bank-  
16 ruptcy judge to whom the travel applies.

17 “(4)(A) The Director of the Administrative Office of  
18 the United States Courts shall—

19 “(i) consolidate the reports submitted under  
20 paragraph (3) into a single report; and

21 “(ii) annually submit such consolidated report  
22 to Congress.

23 “(B) The consolidated report submitted under this  
24 paragraph shall include the specific information required  
25 under paragraph (3)(B), including the name of each bank-

1 ruptcy judge with respect to clauses (i), (ii), and (iii) of  
2 paragraph (3)(B).”.

3 **SEC. 129. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED**  
4 **STATES CODE.**

5 Section 507(a) of title 11, United States Code, is  
6 amended by inserting after paragraph (9) the following:

7 “(10) Tenth, allowed claims for death or per-  
8 sonal injuries resulting from the operation of a  
9 motor vehicle or vessel if such operation was unlaw-  
10 ful because the debtor was intoxicated from using al-  
11 cohol, a drug or another substance.”.

12 **SEC. 130. AMENDMENT TO SECTION 1325 OF TITLE 11,**  
13 **UNITED STATES CODE.**

14 Section 1325(b) of title 11, United States Code, is  
15 amended—

16 (1) in paragraph (1), by inserting “to unse-  
17 cured creditors” after “to make payments”;

18 (2) in paragraph (2)—

19 (A) by inserting “current monthly” before  
20 “income”;

21 (B) by striking “and which is not” and in-  
22 serting “less amounts”;

23 (C) by inserting after “received by the  
24 debtor”, “(other than child support payments,  
25 foster care payments, or disability payments for



1 a dependent child made in accordance with ap-  
2 plicable nonbankruptcy law and which is rea-  
3 sonably necessary to be expended)”; and

4 (D) in subparagraph (A) by inserting after  
5 “dependent of the debtor” the following: “, as  
6 determined in accordance with section  
7 707(b)(2)(A) and if applicable 707(b)(2)(B)”.

8 **SEC. 131. APPLICATION OF THE CODEBTOR STAY ONLY**  
9 **WHEN THE STAY PROTECTS THE DEBTOR.**

10 Section 1301(b) of title 11, United States Code, is  
11 amended—

12 (1) by inserting “(1)” after “(b)”; and

13 (2) by adding at the end the following:

14 “(2)(A) Notwithstanding subsection (c) and except as  
15 provided in subparagraph (B), in any case in which the  
16 debtor did not receive the consideration for the claim held  
17 by a creditor, the stay provided by subsection (a) shall  
18 apply to that creditor for a period not to exceed 30 days  
19 beginning on the date of the order for relief, to the extent  
20 the creditor proceeds against—

21 “(i) the individual that received that consider-  
22 ation; or

23 “(ii) property not in the possession of the debt-  
24 or that secures that claim.

1       “(B) Notwithstanding subparagraph (A), the stay  
2 provided by subsection (a) shall apply in any case in which  
3 the debtor is primarily obligated to pay the creditor in  
4 whole or in part with respect to a claim described in sub-  
5 paragraph (A) under a legally binding separation or prop-  
6 erty settlement agreement or divorce or dissolution decree  
7 with respect to—

8               “(i) an individual described in subparagraph  
9 (A)(i); or

10              “(ii) property described in subparagraph (A)(ii).

11       “(3) Notwithstanding subsection (c), the stay pro-  
12 vided by subsection (a) shall terminate as of the date of  
13 confirmation of the plan, in any case in which the plan  
14 of the debtor provides that the debtor’s interest in per-  
15 sonal property subject to a lease with respect to which the  
16 debtor is the lessee will be surrendered or abandoned or  
17 no payments will be made under the plan on account of  
18 the debtor’s obligations under the lease.”.

19 **SEC. 132. ADEQUATE PROTECTION FOR INVESTORS.**

20       (a) DEFINITION.—Section 101 of title 11, United  
21 States Code, is amended by inserting after paragraph (48)  
22 the following:

23               “(48A) ‘securities self regulatory organization’  
24 means either a securities association registered with  
25 the Securities and Exchange Commission pursuant

1 to section 15A of the Securities Exchange Act of  
2 1934 or a national securities exchange registered  
3 with the Securities and Exchange Commission pur-  
4 suant to section 6 of the Securities Exchange Act of  
5 1934;”.

6 (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
7 United States Code, as amended by section 118, is  
8 amended—

9 (1) in paragraph (19) by striking “or” at the  
10 end;

11 (2) in paragraph (20) by striking the period at  
12 the end and inserting “; or”; and

13 (3) by inserting after paragraph (20) the fol-  
14 lowing:

15 “(21) under subsection (a), of the commence-  
16 ment or continuation of an investigation or action by  
17 a securities self regulatory organization to enforce  
18 such organization’s regulatory power; of the enforce-  
19 ment of an order or decision, other than for mone-  
20 tary sanctions, obtained in an action by the securi-  
21 ties self regulatory organization to enforce such or-  
22 ganization’s regulatory power; or of any act taken by  
23 the securities self regulatory organization to delist,  
24 delete, or refuse to permit quotation of any stock

1       that does not meet applicable regulatory require-  
2       ments.”.

3   **SEC. 133. LIMITATION ON LUXURY GOODS.**

4       Section 523(a)(2)(C) of title 11, United States Code,  
5   is amended to read as follows:

6               “(C)(i) for purposes of subparagraph (A),  
7       consumer debts owed to a single creditor and  
8       aggregating more than \$250 for ‘luxury goods  
9       or services’ incurred by an individual debtor on  
10      or within 90 days before the order for relief  
11      under this title, or cash advances aggregating  
12      more than \$250 that are extensions of con-  
13      sumer credit under an open end credit plan ob-  
14      tained by an individual debtor on or within 90  
15      days before the order for relief under this title,  
16      are presumed to be nondischargeable; and

17              “(ii) for purposes of this subparagraph—

18                      “(I) the term ‘luxury goods or serv-  
19              ices’ does not include goods or services rea-  
20              sonably necessary for the support or main-  
21              tenance of the debtor or a dependent of the  
22              debtor; and

23                      “(II) the term ‘an extension of con-  
24              sumer credit under an open end credit  
25              plan’ has the same meaning such term has

1                   for purposes of the Consumer Credit Pro-  
2                   tection Act;”.

3   **SEC. 134. GIVING DEBTORS THE ABILITY TO KEEP LEASED**  
4                   **PERSONAL PROPERTY BY ASSUMPTION.**

5       Section 365 of title 11, United States Code, is  
6   amended by adding at the end the following:

7       “(p)(1) If a lease of personal property is rejected or  
8   not timely assumed by the trustee under subsection (d),  
9   the leased property is no longer property of the estate and  
10   the stay under section 362(a) of this title is automatically  
11   terminated.

12       “(2) In the case of an individual under chapter 7,  
13   the debtor may notify the creditor in writing that the debt-  
14   or desires to assume the lease. Upon being so notified,  
15   the creditor may, at its option, notify the debtor that it  
16   is willing to have the lease assumed by the debtor and  
17   may, at its option, condition such assumption on cure of  
18   any outstanding default on terms set by the contract. If  
19   within 30 days of the notice from the creditor the debtor  
20   notifies the lessor in writing that the lease is assumed,  
21   the liability under the lease will be assumed by the debtor  
22   and not by the estate. The stay under section 362 of this  
23   title and the injunction under section 524(a) of this title  
24   shall not be violated by notification of the debtor and ne-  
25   gotiation of cure under this subsection. Nothing in this

1 paragraph shall require a debtor to assume a lease, or a  
2 creditor to permit assumption.

3 “(3) In a case under chapter 11 of this title in which  
4 the debtor is an individual and in a case under chapter  
5 13 of this title, if the debtor is the lessee with respect  
6 to personal property and the lease is not assumed in the  
7 plan confirmed by the court, the lease is deemed rejected  
8 as of the conclusion of the hearing on confirmation. If the  
9 lease is rejected, the stay under section 362 of this title  
10 and any stay under section 1301 is automatically termi-  
11 nated with respect to the property subject to the lease.”.

12 **SEC. 135. ADEQUATE PROTECTION OF LESSORS AND PUR-**  
13 **CHASE MONEY SECURED CREDITORS.**

14 (a) IN GENERAL.—Chapter 13 of title 11, United  
15 States Code, is amended by adding after section 1307 the  
16 following:

17 **“§ 1307A. Adequate protection in chapter 13 cases**

18 “(a)(1)(A) On or before the date that is 30 days after  
19 the filing of a case under this chapter, the debtor shall  
20 make cash payments in an amount determined under  
21 paragraph (2), to—

22 “(i) any lessor of personal property; and

23 “(ii) any creditor holding a claim secured by  
24 personal property to the extent that the claim is at-

1       tributable to the purchase of that property by the  
2       debtor.

3       “(B) The debtor or the plan shall continue making  
4 the adequate protection payments required under subpara-  
5 graph (A) until the earlier of the date on which—

6               “(i) the creditor begins to receive actual pay-  
7       ments under the plan; or

8               “(ii) the debtor relinquishes possession of the  
9       property referred to in subparagraph (A) to—

10               “(I) the lessor or creditor; or

11               “(II) any third party acting under claim of  
12       right, as applicable.

13       “(2) The payments referred to in paragraph (1)(A)  
14 shall be the contract amount and shall reduce any amount  
15 payable under section 1326(a) of the title.

16       “(b)(1) Subject to the limitations under paragraph  
17 (2), the court may, after notice and hearing, change the  
18 amount and timing of the dates of payment of payments  
19 made under subsection (a).

20       “(2)(A) The payments referred to in paragraph (1)  
21 shall be payable not less frequently than monthly.

22       “(B) The amount of payments referred to in para-  
23 graph (1) shall not be less than the amount of any weekly,  
24 biweekly, monthly, or other periodic payment scheduled as

1 payable under the contract between the debtor and credi-  
2 tor.

3 “(c) Notwithstanding section 1326(b), the payments  
4 referred to in subsection (a)(1)(A) shall be continued in  
5 addition to plan payments under a confirmed plan until  
6 actual payments to the creditor begin under that plan, if  
7 the confirmed plan provides—

8 “(1) for payments to a creditor or lessor de-  
9 scribed in subsection (a)(1); and

10 “(2) for the deferral of payments to such credi-  
11 tor or lessor under the plan until the payment of  
12 amounts described in section 1326(b).

13 “(d) Notwithstanding sections 362, 542, and 543, a  
14 lessor or creditor described in subsection (a) may retain  
15 possession of property described in that subsection that  
16 was obtained in accordance with applicable law before the  
17 date of filing of the petition until the first payment under  
18 subsection (a)(1)(A) is received by the lessor or creditor.

19 “(e) On or before 60 days after the filing of a case  
20 under this chapter, a debtor retaining possession of per-  
21 sonal property subject to a lease or securing a claim attrib-  
22 utable in whole or in part to the purchase price of such  
23 property shall provide each creditor or lessor reasonable  
24 evidence of the maintenance of any required insurance  
25 coverage with respect to the use or ownership of such



1 property and continue to do so for so long as the debtor  
2 retains possession of such property.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 at the beginning of chapter 13 of title 11, United States  
5 Code, is amended by inserting after the item relating to  
6 section 1307 the following:

“1307A. Adequate protection in chapter 13 cases.”.

7 **SEC. 136. AUTOMATIC STAY.**

8 Section 362(b) of title 11, United States Code, as  
9 amended by sections 118 and 132, is amended—

10 (1) in paragraph (20), by striking “or” at the  
11 end;

12 (2) in paragraph (21), by striking the period at  
13 the end and inserting a semicolon; and

14 (3) by inserting after paragraph (21) the fol-  
15 lowing:

16 “(22) under subsection (a) of any transfer that  
17 is not avoidable under section 544 of this title and  
18 that is not avoidable under section 549 of this title;

19 “(23) under subsection (a)(3), of the continu-  
20 ation of any eviction, unlawful detainer action, or  
21 similar proceeding by a lessor against a debtor in-  
22 volving residential real property in which the debtor  
23 resides as a tenant under a rental agreement and  
24 the debtor has not paid rent to the lessor pursuant  
25 to the terms of the lease agreement or applicable

1 State law after the commencement and during the  
2 course of the case;

3 “(24) under subsection (a)(3), of the com-  
4 mencement or continuation of any eviction, unlawful  
5 detainer action, or similar proceeding by a lessor  
6 against a debtor involving residential real property  
7 in which the debtor resides as a tenant under a rent-  
8 al agreement that has terminated pursuant to the  
9 lease agreement or applicable State law;

10 “(25) under subsection (a)(3), of any eviction,  
11 unlawful detainer action, or similar proceeding, if  
12 the debtor has previously filed within the last year  
13 and failed to pay post-petition rent during the  
14 course of that case; or

15 “(26) under subsection (a)(3), of eviction ac-  
16 tions based on endangerment to property or person  
17 or the use of illegal drugs.”.

18 **SEC. 137. EXTEND PERIOD BETWEEN BANKRUPTCY DIS-**  
19 **CHARGES.**

20 Title 11, United States Code, is amended—

21 (1) in section 727(a)(8) by striking “six” and  
22 inserting “8”; and

23 (2) in section 1328 by adding at the end the  
24 following:

1       “(f) Notwithstanding subsections (a) and (b), the  
2 court shall not grant a discharge of all debts provided for  
3 by the plan or disallowed under section 502 of this title  
4 if the debtor has received a discharge in any case filed  
5 under this title within 5 years of the order for relief under  
6 this chapter.”.

7   **SEC. 138. DEFINITION OF DOMESTIC SUPPORT OBLIGA-**  
8                           **TION.**

9       Section 101 of title 11, United States Code, is  
10 amended—

11               (1) by striking paragraph (12A); and

12               (2) by inserting after paragraph (14) the fol-  
13 lowing:

14               “(14A) ‘domestic support obligation’ means a  
15 debt that accrues before or after the entry of an  
16 order for relief under this title that is—

17                       “(A) owed to or recoverable by—

18                               “(i) a spouse, former spouse, or child  
19 of the debtor or that child’s legal guardian;  
20 or

21                               “(ii) a governmental unit;

22                       “(B) in the nature of alimony, mainte-  
23 nance, or support (including assistance provided  
24 by a governmental unit) of such spouse, former

1 spouse, or child, without regard to whether such  
2 debt is expressly so designated;

3 “(C) established or subject to establish-  
4 ment before or after entry of an order for relief  
5 under this title, by reason of applicable provi-  
6 sions of—

7 “(i) a separation agreement, divorce  
8 decree, or property settlement agreement;

9 “(ii) an order of a court of record; or

10 “(iii) a determination made in accord-  
11 ance with applicable nonbankruptcy law by  
12 a governmental unit; and

13 “(D) not assigned to a nongovernmental  
14 entity, unless that obligation is assigned volun-  
15 tarily by the spouse, former spouse, child, or  
16 parent solely for the purpose of collecting the  
17 debt.”.

18 **SEC. 139. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**  
19 **PORT OBLIGATIONS.**

20 Section 507(a) of title 11, United States Code, is  
21 amended—

22 (1) by striking paragraph (7);

23 (2) by redesignating paragraphs (1) through

24 (6) as paragraphs (2) through (7), respectively;

1           (3) in paragraph (2), as redesignated, by strik-  
2           ing “First” and inserting “Second”;

3           (4) in paragraph (3), as redesignated, by strik-  
4           ing “Second” and inserting “Third”;

5           (5) in paragraph (4), as redesignated, by strik-  
6           ing “Third” and inserting “Fourth”;

7           (6) in paragraph (5), as redesignated, by strik-  
8           ing “Fourth” and inserting “Fifth”;

9           (7) in paragraph (6), as redesignated, by strik-  
10          ing “Fifth” and inserting “Sixth”;

11          (8) in paragraph (7), as redesignated, by strik-  
12          ing “Sixth” and inserting “Seventh”; and

13          (9) by inserting before paragraph (2), as redesi-  
14          gnated, the following:

15               “(1) First, allowed claims for domestic support  
16               obligations to be paid in the following order on the  
17               condition that funds received under this paragraph  
18               by a governmental unit in a case under this title be  
19               applied:

20                       “(A) Claims that, as of the date of entry  
21                       of the order for relief, are owed directly to a  
22                       spouse, former spouse, or child of the debtor, or  
23                       the parent of such child, without regard to  
24                       whether the claim is filed by the spouse, former

1 spouse, child, or parent, or is filed by a govern-  
2 mental unit on behalf of that person.

3 “(B) Claims that, as of the date of entry  
4 of the order for relief, are assigned by a spouse,  
5 former spouse, child of the debtor, or the par-  
6 ent of that child to a governmental unit or are  
7 owed directly to a governmental unit under ap-  
8 plicable nonbankruptcy law.”.

9 **SEC. 140. REQUIREMENTS TO OBTAIN CONFIRMATION AND**  
10 **DISCHARGE IN CASES INVOLVING DOMESTIC**  
11 **SUPPORT OBLIGATIONS.**

12 Title 11, United States Code, is amended—

13 (1) in section 1129(a), by adding at the end the  
14 following:

15 “(14) If the debtor is required by a judicial or  
16 administrative order or statute to pay a domestic  
17 support obligation, the debtor has paid all amounts  
18 payable under such order or statute for such obliga-  
19 tion that become payable after the date on which the  
20 petition is filed.”;

21 (2) in section 1325(a)—

22 (A) in paragraph (5), by striking “and” at  
23 the end;

24 (B) in paragraph (6), by striking the pe-  
25 riod at the end and inserting “; and”; and

1 (C) by adding at the end the following:

2 “(7) if the debtor is required by a judicial or  
3 administrative order or statute to pay a domestic  
4 support obligation, the debtor has paid all amounts  
5 payable under such order for such obligation that  
6 become payable after the date on which the petition  
7 is filed.”; and

8 (3) in section 1328(a), as amended by section  
9 127, in the matter preceding paragraph (1), by in-  
10 serting “, and with respect to a debtor who is re-  
11 quired by a judicial or administrative order to pay  
12 a domestic support obligation, certifies that all  
13 amounts payable under such order or statute that  
14 are due on or before the date of the certification (in-  
15 cluding amounts due before or after the petition was  
16 filed) have been paid” after “completion by the debt-  
17 or of all payments under the plan”.

18 **SEC. 141. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**  
19 **SUPPORT OBLIGATION PROCEEDINGS.**

20 Section 362(b) of title 11, United States Code, as  
21 amended by sections 118, 132, and 136, is amended—

22 (1) by striking paragraph (2) and inserting the  
23 following:

24 “(2) under subsection (a)—

1                   “(A) of the commencement or continuation  
2 of an action or proceeding for—

3                   “(i) the establishment of paternity; or

4                   “(ii) the establishment or modification  
5 of an order for domestic support obliga-  
6 tions; or

7                   “(B) the collection of a domestic support  
8 obligation from property that is not property of  
9 the estate;”;

10                  (2) in paragraph (25), by striking “or” at the  
11 end;

12                  (3) in paragraph (26), by striking the period at  
13 the end and inserting a semicolon; and

14                  (4) by inserting after paragraph (26) the fol-  
15 lowing:

16                  “(27) under subsection (a) with respect to the  
17 withholding of income pursuant to an order as speci-  
18 fied in section 466(b) of the Social Security Act (42  
19 U.S.C. 666(b)); or

20                  “(28) under subsection (a) with respect to—

21                   “(A) the withholding, suspension, or re-  
22 striction of drivers’ licenses, professional and  
23 occupational licenses, and recreational licenses  
24 pursuant to State law, as specified in section  
25 466(a)(16) of the Social Security Act (42



1 U.S.C. 666(a)(16)) or with respect to the re-  
2 porting of overdue support owed by an absent  
3 parent to any consumer reporting agency as  
4 specified in section 466(a)(7) of the Social Se-  
5 curity Act (42 U.S.C. 666(a)(7));

6 “(B) the interception of tax refunds, as  
7 specified in sections 464 and 466(a)(3) of the  
8 Social Security Act (42 U.S.C. 664 and  
9 666(a)(3)); or

10 “(C) the enforcement of medical obliga-  
11 tions as specified under title IV of the Social  
12 Security Act (42 U.S.C. 601 et seq.).”.

13 **SEC. 142. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR**  
14 **ALIMONY, MAINTENANCE, AND SUPPORT.**

15 Section 523 of title 11, United States Code, is  
16 amended—

17 (1) in subsection (a), by striking paragraph (5)  
18 and inserting the following:

19 “(5) for a domestic support obligation;”;

20 (2) in subsection (a)(15)—

21 (A) by inserting “or” after “court of  
22 record,”;

23 (B) by striking “unless—” and all that fol-  
24 lows through “debtor” the last place it appears;  
25 and

1           (3) in subsection (c), by striking “(6), or (15)”  
2           each place it appears and inserting “or (6)”.

3 **SEC. 143. CONTINUED LIABILITY OF PROPERTY.**

4           Section 522 of title 11, United States Code, is  
5 amended—

6           (1) in subsection (c), by striking paragraph (1)  
7           and inserting the following:

8           “(1) a debt of a kind specified in paragraph (1)  
9           or (5) of section 523(a) (in which case, notwith-  
10          standing any provision of applicable nonbankruptcy  
11          law to the contrary, such property shall be liable for  
12          a debt of a kind specified in section 523(a)(5);”; and

13          (2) in subsection (f)(1)(A), by striking the dash  
14          and all that follows through the end of the subpara-  
15          graph and inserting “of a kind that is specified in  
16          section 523(a)(5); or”.

17 **SEC. 144. PROTECTION OF DOMESTIC SUPPORT CLAIMS**  
18 **AGAINST PREFERENTIAL TRANSFER MO-**  
19 **TIONS.**

20          Section 547(c)(7) of title 11, United States Code, is  
21 amended to read as follows:

22          “(7) to the extent such transfer was a bona fide  
23          payment of a debt for a domestic support obligation;  
24          or”.

1   **SEC. 145. CLARIFICATION OF MEANING OF HOUSEHOLD**  
2                   **GOODS.**

3           Section 101 of title 11, United States Code, is  
4 amended by inserting after paragraph (27) the following:

5           “(27A) ‘household goods’ includes tangible per-  
6 sonal property normally found in or around a resi-  
7 dence, but does not include motorized vehicles used  
8 for transportation purposes;”.

9   **SEC. 146. NONDISCHARGEABLE DEBTS.**

10          Section 523(a) of title 11, United States Code, is  
11 amended by inserting after paragraph (14) the following:

12          “(14A) incurred to pay a debt that is non-  
13 dischargeable by reason of section 727, 1141,  
14 1228(a), 1228(b), or 1328(c), or any other provision  
15 of this subsection, if the debtor incurred the debt to  
16 pay such a nondischargeable debt with the intent to  
17 discharge in bankruptcy the newly-created debt, ex-  
18 cept that all debts incurred to pay nondischargeable  
19 debts, without regard to intent, are nondischargeable  
20 if incurred within 90 days of the filing of the peti-  
21 tion;”.

22   **SEC. 147. MONETARY LIMITATION ON CERTAIN EXEMPT**  
23                   **PROPERTY.**

24          Section 522 of title 11, United States Code, as  
25 amended by section 125, is amended—

1           (1) in subsection (b)(2)(A) by striking “sub-  
2       section (o)” and inserting “subsections (o) and (p)”  
3       before “any property”; and

4           (2) by adding at the end the following:

5       “(p)(1) Except as provided in paragraphs (2) and  
6       (3), as a result of electing under subsection (b)(3)(A) to  
7       exempt property under State or local law, a debtor may  
8       not exempt any interest that exceeds \$250,000 in value,  
9       in the aggregate, in—

10           “(A) real or personal property that the debtor  
11       or a dependent of the debtor uses as a residence;

12           “(B) a cooperative that owns property that the  
13       debtor or a dependent of the debtor uses as a resi-  
14       dence; or

15           “(C) a burial plot for the debtor or a dependent  
16       of the debtor.

17       “(2) The limitation under paragraph (1) shall not  
18       apply to an exemption claimed under subsection (b)(3)(A)  
19       by a family farmer for the principal residence of that  
20       farmer.

21       “(3) Paragraph (1) shall not apply to debtors if appli-  
22       cable State law expressly provides by a statute enacted  
23       after the effective date of this paragraph that such para-  
24       graph shall not apply to debtors.”.

1   **SEC. 148. BANKRUPTCY FEES.**

2           Section 1930 of title 28, United States Code, is  
3 amended—

4           (1) in subsection (a) by striking “Notwithstand-  
5       ing section 1915 of this title, the” and inserting  
6       “The”; and

7           (2) by adding at the end the following:

8       “(f)(1) Pursuant to procedures prescribed by the Ju-  
9       dicial Conference of the United States, the district court  
10      or the bankruptcy court may waive the filing fee in a case  
11      under chapter 7 of title 11 for an individual debtor who  
12      is unable to pay such fee in installments. For purposes  
13      of this paragraph, the term ‘filing fee’ means the filing  
14      fee required by subsection (a), or any other fee prescribed  
15      by the Judicial Conference under subsections (b) and (c)  
16      that is payable to the clerk upon the commencement of  
17      a case under chapter 7 of title 11.

18       “(2) The district court or the bankruptcy court may  
19      also waive for such debtors other fees prescribed pursuant  
20      to subsections (b) and (c).

21       “(3) This subsection does not restrict the district  
22      court or the bankruptcy court from waiving, in accordance  
23      with Judicial Conference policy, fees prescribed pursuant  
24      to such subsections for other debtors and creditors.”.

1   **SEC. 149. COLLECTION OF CHILD SUPPORT.**

2           (a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Sec-  
3   tion 704 of title 11, United States Code, as amended by  
4   section 102, is amended—

5           (1) by inserting “(a)” before “The trustee”,

6           (2) in paragraph (9) by striking “and” at the  
7   end,

8           (3) in paragraph (10) by striking the period  
9   and inserting “; and”, and

10          (4) by adding at the end the following:

11          “(11) if, with respect to an individual debtor,  
12   there is a claim for support of a child of the debtor  
13   or a custodial parent of such child entitled to receive  
14   priority under section 507(a)(1) of this title, provide  
15   the applicable notification specified in subsection (b).

16          “(b)(1) In any case described in subsection (a)(11),  
17   the trustee shall—

18          “(A)(i) notify in writing the holder of the claim  
19   of the right of such holder to use the services of a  
20   State child support enforcement agency established  
21   under sections 464 and 466 of the Social Security  
22   Act for the State in which the holder resides; and

23          “(ii) include in the notice under this paragraph  
24   the address and telephone number of the child sup-  
25   port enforcement agency; and

1           “(B)(i) notify in writing the State child support  
2           agency of the State in which the holder of the claim  
3           resides of the claim;

4           “(ii) include in the notice under this paragraph  
5           the name, address, and telephone number of the  
6           holder of the claim; and

7           “(iii) at such time as the debtor is granted a  
8           discharge under section 727 of this title, notify the  
9           holder of such claim and the State child support  
10          agency of the State in which such holder resides  
11          of—

12                   “(I) the granting of the discharge;

13                   “(II) the last recent known address of the  
14           debtor; and

15           “(III) with respect to the debtor’s case, the  
16           name of each creditor that holds a claim that  
17           is not discharged under paragraph (2), (4), or  
18           (14A) of section 523(a) of this title or that was  
19           reaffirmed by the debtor under section 524(c)  
20           of this title.

21          “(2)(A) If, after receiving a notice under paragraph  
22          (1)(B)(iii), a holder of a claim or a State child support  
23          agency is unable to locate the debtor that is the subject  
24          of the notice, such holder or such agency may request from

1 a creditor described in paragraph (1)(B)(iii)(III) the last  
2 known address of the debtor.

3 “(B) Notwithstanding any other provision of law, a  
4 creditor that makes a disclosure of a last known address  
5 of a debtor in connection with a request made under sub-  
6 paragraph (A) shall not be liable to the debtor or any  
7 other person by reason of making such disclosure.”.

8 (b) DUTIES OF TRUSTEE UNDER CHAPTER 13.—  
9 Section 1302 of title 11, United States Code, is  
10 amended—

11 (1) in subsection (b)—

12 (A) in paragraph (4) by striking “and” at  
13 the end,

14 (B) in paragraph (5) by striking the period  
15 and inserting “; and”, and

16 (C) by adding at the end the following:

17 “(6) if, with respect to an individual debtor,  
18 there is a claim for support of a child of the debtor  
19 or a custodial parent of such child entitled to receive  
20 priority under section 507(a)(1) of this title, provide  
21 the applicable notification specified in subsection  
22 (d).”, and

23 (2) by adding at the end the following:

24 “(d)(1) In any case described in subsection (b)(6),  
25 the trustee shall—



1           “(A)(i) notify in writing the holder of the claim  
2           of the right of such holder to use the services of a  
3           State child support enforcement agency established  
4           under sections 464 and 466 of the Social Security  
5           Act for the State in which the holder resides; and

6           “(ii) include in the notice under this paragraph  
7           the address and telephone number of the child sup-  
8           port enforcement agency; and

9           “(B)(i) notify in writing the State child support  
10          agency of the State in which the holder of the claim  
11          resides of the claim; and

12          “(ii) include in the notice under this paragraph  
13          the name, address, and telephone number of the  
14          holder of the claim;

15          “(iii) at such time as the debtor is granted a  
16          discharge under section 1328 of this title, notify the  
17          holder of the claim and the State child support  
18          agency of the State in which such holder resides  
19          of—

20                 “(I) the granting of the discharge;

21                 “(II) the last recent known address of the  
22          debtor; and

23                 “(III) with respect to the debtor’s case, the  
24          name of each creditor that holds a claim that  
25          is not discharged under paragraph (2), (4), or

1 (14A) of section 523(a) of this title or that was  
2 reaffirmed by the debtor under section 524(c)  
3 of this title.

4 “(2)(A) If, after receiving a notice under paragraph  
5 (1)(B)(iii), a holder of a claim or a State child support  
6 agency is unable to locate the debtor that is the subject  
7 of the notice, such holder or such agency may request from  
8 a creditor described in paragraph (1)(B)(iii) the last  
9 known address of the debtor.

10 “(B) Notwithstanding any other provision of law, a  
11 creditor that makes a disclosure of a last known address  
12 of a debtor in connection with a request made under sub-  
13 paragraph (A) shall not be liable to the debtor or any  
14 other person by reason of making such disclosure.”.

15 **SEC. 150. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICI-**  
16 **PANT CONTRIBUTIONS AND OTHER PROP-**  
17 **ERTY FROM THE ESTATE.**

18 (a) IN GENERAL.—Section 541(b) of title 11 of the  
19 United States Code is amended—

20 (1) by striking “or” at the end of paragraph  
21 (4)(B)(ii);

22 (2) by striking the period at the end of para-  
23 graph (5) and inserting “; or”; and

24 (3) by inserting after paragraph (5) the follow-  
25 ing:

1           “(7) any amount or interest in property to the  
2           extent that an employer has withheld amounts from  
3           the wages of employees for contribution to an em-  
4           ployee benefit plan subject to title I of the Employee  
5           Retirement Income Security Act of 1974, or to the  
6           extent that the employer has received amounts as a  
7           result of payments by participants or beneficiaries to  
8           an employer for contribution to an employee benefit  
9           plan subject to title I of the Employee Retirement  
10          Income Security Act of 1974.”.

11          (b) APPLICATION OF AMENDMENT.—The amendment  
12       made by this section shall not apply to cases commenced  
13       under title 11 of the United States Code before the expira-  
14       tion of the 180-day period beginning on the date of the  
15       enactment of this Act.

16       **SEC. 151. CLARIFICATION OF POSTPETITION WAGES AND**  
17                               **BENEFITS.**

18          Section 503(b)(1)(A) of title 11, United States Code,  
19       is amended to read as follows:

20               “(A) the actual, necessary costs and expenses of  
21               preserving the estate, including wages, salaries, or  
22               commissions for services rendered after the com-  
23               mencement of the case, and wages and benefits at-  
24               tributable to any period of time after commencement  
25               of the case as a result of the debtor’s violation of

1 Federal law, without regard to when the original un-  
2 lawful act occurred or to whether any services were  
3 rendered;”.

4 **SEC. 152. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC**  
5 **SUPPORT OBLIGATION PROCEEDINGS.**

6 Section 362(b)(2) of title 11, United States Code, is  
7 amended—

8 (1) in subparagraph (A) by striking “or” at the  
9 end;

10 (2) in subparagraph (B) by adding “or” at the  
11 end; and

12 (3) by adding at the end the following:

13 “(C) under subsection (a) of—

14 “(i) the withholding of income for  
15 payment of a domestic support obligation  
16 pursuant to a judicial or administrative  
17 order or statute for such obligation that  
18 first becomes payable after the date on  
19 which the petition is filed; or

20 “(ii) the withholding of income for  
21 payment of a domestic support obligation  
22 owed directly to the spouse, former spouse  
23 or child of the debtor or the parent of such  
24 child, pursuant to a judicial or administra-  
25 tive order or statute for such obligation

1           that becomes payable before the date on  
2           which the petition is filed unless the court  
3           finds, after notice and hearing, that such  
4           withholding would render the plan infeasible;”.

6 **SEC. 153. AUTOMATIC STAY INAPPLICABLE TO CERTAIN**  
7 **PROCEEDINGS AGAINST THE DEBTOR.**

8           Section 362(b)(2) of title 11, United States Code, as  
9   amended by section 153, is amended—

10           (1) in subparagraph (B) by striking “or” at the  
11   end;

12           (2) by inserting after subparagraph (C) the following:  
13   

14           “(D) the commencement or continuation of  
15   a proceeding concerning a child custody or visitation;  
16   

17           “(E) the commencement or continuation of  
18   a proceeding alleging domestic violence; or

19           “(F) the commencement or continuation of  
20   a proceeding seeking a dissolution of marriage,  
21   except to the extent the proceeding concerns  
22   property of the estate;”.

1           **TITLE II—DISCOURAGING**  
2                   **BANKRUPTCY ABUSE**

3   **SEC. 201. REENACTMENT OF CHAPTER 12.**

4           (a) REENACTMENT.—Chapter 12 of title 11 of the  
5 United States Code, as in effect on March 31, 1999, is  
6 hereby reenacted.

7           (b) EFFECTIVE DATE.—The amendment made by  
8 subsection (a) shall take effect on March 31, 1999.

9   **SEC. 202. MEETINGS OF CREDITORS AND EQUITY SECURITY**  
10                   **HOLDERS.**

11          Section 341 of title 11, United States Code, is  
12 amended by adding at the end the following:

13          “(e) Notwithstanding subsections (a) and (b), the  
14 court, on the request of a party in interest and after notice  
15 and a hearing, for cause may order that the United States  
16 trustee not convene a meeting of creditors or equity secu-  
17 rity holders if the debtor has filed a plan as to which the  
18 debtor solicited acceptances prior to the commencement  
19 of the case.”.

20   **SEC. 203. PROTECTION OF RETIREMENT SAVINGS IN BANK-**  
21                   **RUPTCY.**

22          (a) IN GENERAL.—Section 522 of title 11, United  
23 States Code, as amended by sections 113, 125, and 147  
24 is amended—

25               (1) in subsection (b)—

1 (A) in paragraph (2)—

2 (i) by striking “(2)(A)” and inserting:

3 “(3) Property listed in this paragraph is—

4 “(A) subject to subsections (o) and (p),”;

5 (ii) in subparagraph (B), by striking

6 “and” at the end;

7 (iii) in subparagraph (C), by striking

8 the period at the end and inserting “;

9 and”; and

10 (iv) by adding at the end the follow-

11 ing:

12 “(D) retirement funds to the extent that those

13 funds are in a fund or account that is exempt from

14 taxation under section 401, 403, 408, 408A, 414,

15 457, or 501(a) of the Internal Revenue Code of

16 1986.”;

17 (B) by striking paragraph (1) and insert-

18 ing:

19 “(2) Property listed in this paragraph is property

20 that is specified under subsection (d), unless the State law

21 that is applicable to the debtor under paragraph (3)(A)

22 specifically does not so authorize.”;

23 (C) in the matter preceding paragraph

24 (2)—

1 (i) by striking “(b)” and inserting  
2 “(b)(1)”;

3 (ii) by striking “paragraph (2)” both  
4 places it appears and inserting “paragraph  
5 (3)”;

6 (iii) by striking “paragraph (1)” each  
7 place it appears and inserting “paragraph  
8 (2)”;

9 (iv) by striking “Such property is—”;  
10 and

11 (D) by adding at the end of the subsection  
12 the following:

13 “(4) For purposes of paragraph (3)(D) and sub-  
14 section (d)(12), the following shall apply:

15 “(A) If the retirement funds are in a retirement  
16 fund that has received a favorable determination  
17 pursuant to section 7805 of the Internal Revenue  
18 Code of 1986, and that determination is in effect as  
19 of the date of the commencement of the case under  
20 section 301, 302, or 303 of this title, those funds  
21 shall be presumed to be exempt from the estate.

22 “(B) If the retirement funds are in a retirement  
23 fund that has not received a favorable determination  
24 pursuant to such section 7805, those funds are ex-



1       empt from the estate if the debtor demonstrates  
2       that—

3               “(i) no prior determination to the contrary  
4               has been made by a court or the Internal Reve-  
5               nue Service; and

6               “(ii) the retirement fund is in substantial  
7               compliance with the applicable requirements of  
8               the Internal Revenue Code of 1986.

9               “(C) A direct transfer of retirement funds from  
10       1 fund or account that is exempt from taxation  
11       under section 401, 403, 408, 408A, 414, 457, or  
12       501(a) of the Internal Revenue Code of 1986, pur-  
13       suant to section 401(a)(31) of the Internal Revenue  
14       Code of 1986, or otherwise, shall not cease to qualify  
15       for exemption under paragraph (3)(D) or subsection  
16       (d)(12) by reason of that direct transfer.

17               “(D)(i) Any distribution that qualifies as an eli-  
18       gible rollover distribution within the meaning of sec-  
19       tion 402(c) of the Internal Revenue Code of 1986 or  
20       that is described in clause (ii) shall not cease to  
21       qualify for exemption under paragraph (3)(D) or  
22       subsection (d)(12) by reason of that distribution.

23               “(ii) A distribution described in this clause is  
24       an amount that—

1           “(I) has been distributed from a fund or  
2           account that is exempt from taxation under sec-  
3           tion 401, 403, 408, 408A, 414, 457, or 501(a)  
4           of the Internal Revenue Code of 1986; and

5           “(II) to the extent allowed by law, is de-  
6           posited in such a fund or account not later than  
7           60 days after the distribution of that amount.”;  
8           and

9           (2) in subsection (d)—

10           (A) in the matter preceding paragraph (1),  
11           by striking “subsection (b)(1)” and inserting  
12           “subsection (b)(2)”; and

13           (B) by adding at the end the following:

14           “(12) Retirement funds to the extent that those  
15           funds are in a fund or account that is exempt from  
16           taxation under section 401, 403, 408, 408A, 414,  
17           457, or 501(a) of the Internal Revenue Code of  
18           1986.”.

19           (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
20           United States Code, as amended by sections 118, 132,  
21           136, and 141 is amended—

22           (1) in paragraph (27), by striking “or” at the  
23           end;

24           (2) in paragraph (28), by striking the period  
25           and inserting “; or”;

1           (3) by inserting after paragraph (28) the fol-  
2       lowing:

3           “(29) under subsection (a), of withholding of  
4       income from a debtor’s wages and collection of  
5       amounts withheld, pursuant to the debtor’s agree-  
6       ment authorizing that withholding and collection for  
7       the benefit of a pension, profit-sharing, stock bonus,  
8       or other plan established under section 401, 403,  
9       408, 408A, 414, 457, or 501(a) of the Internal Rev-  
10      enue Code of 1986 that is sponsored by the em-  
11      ployer of the debtor, or an affiliate, successor, or  
12      predecessor of such employer—

13           “(A) to the extent that the amounts with-  
14      held and collected are used solely for payments  
15      relating to a loan from a plan that satisfies the  
16      requirements of section 408(b)(1) of the Em-  
17      ployee Retirement Income Security Act of 1974  
18      or is subject to section 72(p) of the Internal  
19      Revenue Code of 1986; or

20           “(B) in the case of a loan from a thrift  
21      savings plan described in subchapter III of title  
22      5, that satisfies the requirements of section  
23      8433(g) of such title.”; and

24           (4) by adding at the end of the flush material  
25      following paragraph (29) the following: “Paragraph

1       (29) does not apply to any amount owed to a plan  
2       referred to in that paragraph that is incurred under  
3       a loan made during the 1-year period preceding the  
4       filing of a petition. Nothing in paragraph (29) may  
5       be construed to provide that any loan made under  
6       a governmental plan under section 414(d), or a con-  
7       tract or account under section 403(b), of the Inter-  
8       nal Revenue Code of 1986 constitutes a claim or a  
9       debt under this title.”.

10       (c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of  
11 title 11, United States Code, is amended—

12               (1) by striking “or” at the end of paragraph  
13       (17);

14               (2) by striking the period at the end of para-  
15       graph (18) and inserting “; or”; and

16               (3) by adding at the end the following:

17               “(19) owed to a pension, profit-sharing, stock  
18       bonus, or other plan established under section 401,  
19       403, 408, 408A, 414, 457, or 501(c) of the Internal  
20       Revenue Code of 1986, pursuant to—

21               “(A) a loan permitted under section  
22       408(b)(1) of the Employee Retirement Income  
23       Security Act of 1974) or subject to section  
24       72(p) of the Internal Revenue Code of 1986; or

1           “(B) a loan from the thrift savings plan  
2           described in subchapter III of title 5, that satis-  
3           fies the requirements of section 8433(g) of such  
4           title.

5 Paragraph (19) does not apply to any amount owed to  
6 a plan referred to in that paragraph that is incurred under  
7 a loan made during the 1-year period preceding the filing  
8 of a petition. Nothing in paragraph (19) may be construed  
9 to provide that any loan made under a governmental plan  
10 under section 414(d), or a contract or account under sec-  
11 tion 403(b), of the Internal Revenue Code of 1986 con-  
12 stitutes a claim or a debt under this title.”.

13       (d) PLAN CONTENTS.—Section 1322 of title 11,  
14 United States Code, is amended by adding at the end the  
15 following:

16       “(f) A plan may not materially alter the terms of a  
17 loan described in section 362(b)(29) of this title.”.

18 **SEC. 204. PROTECTION OF REFINANCE OF SECURITY IN-**  
19 **TEREST.**

20       Subparagraphs (A), (B), and (C) of section 547(e)(2)  
21 of title 11, United States Code, are amended by striking  
22 “10” each place it appears and inserting “30”.

1 **SEC. 205. EXECUTORY CONTRACTS AND UNEXPIRED**  
2 **LEASES.**

3 Section 365(d)(4) of title 11, United States Code, is  
4 amended to read as follows:

5 “(4)(A) Subject to subparagraph (B), in any case  
6 under any chapter in this title, an unexpired lease of non-  
7 residential real property under which the debtor is the les-  
8 see shall be deemed rejected, and the trustee shall imme-  
9 diately surrender such property to the lessor, if the trustee  
10 does not assume or reject the unexpired lease by the ear-  
11 lier of—

12 “(i) the date that is 120 days after the date of  
13 the order for relief; or

14 “(ii) the date of the entry of an order confirm-  
15 ing a plan.

16 “(B)(i) The court may extend the period determined  
17 under subparagraph (A) for 120 days upon motion of the  
18 trustee or the lessor for cause.

19 “(ii) If the court grants an extension under clause  
20 (i), the court may grant a subsequent extension only upon  
21 prior written consent of the lessor.”.

22 **SEC. 206. CREDITORS AND EQUITY SECURITY HOLDERS**  
23 **COMMITTEES.**

24 Section 1102(a)(2) of title 11, United States Code,  
25 is amended by inserting before the first sentence the fol-  
26 lowing: “On its own motion or on request of a party in

1 interest, and after notice and hearing, the court may order  
2 a change in the membership of a committee appointed  
3 under this subsection, if the court determines that the  
4 change is necessary to ensure adequate representation of  
5 creditors or equity security holders.”.

6 **SEC. 207. AMENDMENT TO SECTION 546 OF TITLE 11,**  
7 **UNITED STATES CODE.**

8 Section 546 of title 11, United States Code, is  
9 amended by inserting at the end thereof:

10 “(i) Notwithstanding section 545 (2) and (3) of this  
11 title, the trustee may not avoid a warehouseman’s lien for  
12 storage, transportation or other costs incidental to the  
13 storage and handling of goods, as provided by section 7–  
14 209 of the Uniform Commercial Code.”.

15 **SEC. 208. LIMITATION.**

16 Section 546(c)(1)(B) of title 11, United States Code,  
17 is amended by striking “20” and inserting “45”.

18 **SEC. 209. AMENDMENT TO SECTION 330(a) OF TITLE 11,**  
19 **UNITED STATES CODE.**

20 Section 330(a) of title 11, United States Code, is  
21 amended—

22 (1) in paragraph (3)—

23 (A) in subparagraph (A) after “awarded”,  
24 by inserting “to an examiner, chapter 11 trust-  
25 ee, or professional person”; and

1 (B) by redesignating subdivisions (A)  
2 through (E) as clauses (i) through (iv), respec-  
3 tively; and

4 (2) by adding at the the following:

5 “(B) In determining the amount of reasonable  
6 compensation to be awarded a trustee, the court  
7 shall treat such compensation as a commission based  
8 on the results achieved.”.

9 **SEC. 210. POSTPETITION DISCLOSURE AND SOLICITATION.**

10 Section 1125 of title 11, United States Code, is  
11 amended by adding at the end the following:

12 “(g) Notwithstanding subsection (b), an acceptance  
13 or rejection of the plan may be solicited from a holder  
14 of a claim or interest if such solicitation complies with ap-  
15 plicable nonbankruptcy law and if such holder was solici-  
16 ited before the commencement of the case in a manner  
17 complying with applicable nonbankruptcy law.”.

18 **SEC. 211. PREFERENCES.**

19 Section 547(c) of title 11, United States Code, is  
20 amended—

21 (1) by amending paragraph (2) to read as fol-  
22 lows:

23 “(2) to the extent that such transfer was in  
24 payment of a debt incurred by the debtor in the or-



1       dinary course of business or financial affairs of the  
2       debtor and the transferee, and such transfer was—

3               “(A) made in the ordinary course of busi-  
4               ness or financial affairs of the debtor and the  
5               transferee; or

6               “(B) made according to ordinary business  
7               terms;”;

8       (2) in paragraph (7) by striking “or” at the  
9       end;

10       (3) in paragraph (8) by striking the period at  
11       the end and inserting “; or”; and

12       (4) by adding at the end the following:

13               “(9) if, in a case filed by a debtor whose debts  
14       are not primarily consumer debts, the aggregate  
15       value of all property that constitutes or is affected  
16       by such transfer is less than \$5,000.”.

17   **SEC. 212. VENUE OF CERTAIN PROCEEDINGS.**

18       Section 1409(b) of title 28, United States Code, is  
19       amended by inserting “, or a nonconsumer debt against  
20       a noninsider of less than \$10,000,” after “\$5,000”.

21   **SEC. 213. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

22       Section 1121(d) of title 11, United States Code, is  
23       amended—

24               (1) by striking “On” and inserting “(1) Subject  
25       to paragraph (1), on”; and

1 (2) by adding at the end the following:

2 “(2)(A) Such 120-day period may not be extended  
3 beyond a date that is 18 months after the date of the order  
4 for relief under this chapter.

5 “(B) Such 180-day period may not be extended be-  
6 yond a date that is 20 months after the date of the order  
7 for relief under this chapter.”.

8 **SEC. 214. FEES ARISING FROM CERTAIN OWNERSHIP IN-**  
9 **TERESTS.**

10 Section 523(a)(16) of title 11, United States Code,  
11 is amended—

12 (1) by striking “dwelling” the first place it ap-  
13 pears;

14 (2) by striking “ownership or” and inserting  
15 “ownership,”;

16 (3) by striking “housing” the first place it ap-  
17 pears; and

18 (4) by striking “but only” and all that follows  
19 through “such period,” and inserting “or a lot in a  
20 homeowners association, for as long as the debtor or  
21 the trustee has a legal, equitable, or possessory own-  
22 ership interest in such unit, such corporation, or  
23 such lot,”.

1   **SEC. 215. CLAIMS RELATING TO INSURANCE DEPOSITS IN**  
2                   **CASES ANCILLARY TO FOREIGN PROCEED-**  
3                   **INGS.**

4       Section 304 of title 11, United States Code, is  
5   amended to read as follows:

6   **“§ 304. Cases ancillary to foreign proceedings**

7       “(a) For purposes of this section—

8           “(1) the term ‘domestic insurance company’  
9       means a domestic insurance company, as such term  
10      is used in section 109(b)(2);

11          “(2) the term ‘foreign insurance company’  
12      means a foreign insurance company, as such term is  
13      used in section 109(b)(3);

14          “(3) the term ‘United States claimant’ means a  
15      beneficiary of any deposit referred to in subsection  
16      (b) or any multibeneficiary trust referred to in sub-  
17      section (b);

18          “(4) the term ‘United States creditor’ means,  
19      with respect to a foreign insurance company—

20           “(A) a United States claimant; or

21           “(B) any business entity that operates in  
22      the United States and that is a creditor; and

23          “(5) the term ‘United States policyholder’  
24      means a holder of an insurance policy issued in the  
25      United States.

1       “(b) The court may not grant relief under chapter  
2 15 of this title with respect to any deposit, escrow, trust  
3 fund, or other security required or permitted under any  
4 applicable State insurance law or regulation for the benefit  
5 of claim holders in the United States.”.

6 **SEC. 216. DEFAULTS BASED ON NONMONETARY OBLIGA-**  
7 **TIONS.**

8       (a) EXECUTORY CONTRACTS AND UNEXPIRED  
9 LEASES.—Section 365 of title 11, United States Code, is  
10 amended—

11           (1) in subsection (b)—

12                   (A) in paragraph (1)(A) by striking the  
13 semicolon at the end and inserting the follow-  
14 ing:

15       “other than a default that is a breach of a provision  
16 relating to—

17           “(i) the satisfaction of any provision (other  
18 than a penalty rate or penalty provision) relat-  
19 ing to a default arising from any failure to per-  
20 form nonmonetary obligations under an unex-  
21 pired lease of real property (excluding executory  
22 contracts that transfer a right or interest under  
23 a filed or issued patent, copyright, trademark,  
24 trade dress, or trade secret), if it is impossible  
25 for the trustee to cure such default by perform-

1           ing nonmonetary acts at and after the time of  
2           assumption; or

3                 “(ii) the satisfaction of any provision  
4           (other than a penalty rate or penalty provision)  
5           relating to a default arising from any failure to  
6           perform nonmonetary obligations under an ex-  
7           ecutory contract, if it is impossible for the  
8           trustee to cure such default by performing non-  
9           monetary acts at and after the time of assump-  
10          tion and if the court determines, based on the  
11          equities of the case, that this subparagraph  
12          should not apply with respect to such default;”;  
13          and

14                 (B) by amending paragraph (2)(D) to read  
15          as follows:

16                 “(D) the satisfaction of any penalty rate or  
17          penalty provision relating to a default arising from  
18          a failure to perform nonmonetary obligations under  
19          an executory contract (excluding executory contracts  
20          that transfer a right or interest under a filed or  
21          issued patent, copyright, trademark, trade dress, or  
22          trade secret) or under an unexpired lease of real or  
23          personal property.”;

24                 (2) in subsection (c)—

1 (A) in paragraph (2) by adding “or” at the  
2 end;

3 (B) in paragraph (3) by striking “; or” at  
4 the end and inserting a period; and

5 (C) by striking paragraph (4);

6 (3) in subsection (d)—

7 (A) by striking paragraphs (5) through  
8 (9); and

9 (B) by redesignating paragraph (10) as  
10 paragraph (5); and

11 (4) in subsection (f)(1) by striking “; except  
12 that” and all that follows through the end of the  
13 paragraph and inserting a period.

14 (b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Sec-  
15 tion 1124(2) of title 11, United States Code, is  
16 amended—

17 (1) in subparagraph (A) by inserting “or of a  
18 kind that section 365(b)(1)(A) of this title expressly  
19 does not require to be cured” before the semicolon  
20 at the end;

21 (2) in subparagraph (C) by striking “and” at  
22 the end;

23 (3) by redesignating subparagraph (D) as sub-  
24 paragraph (E); and

1 (4) by inserting after subparagraph (C) the fol-  
2 lowing:

3 “(D) if such claim or such interest arises  
4 from any failure to perform a nonmonetary ob-  
5 ligation, compensates the holder of such claim  
6 or such interest (other than the debtor or an in-  
7 sider) for any actual pecuniary loss incurred by  
8 such holder as a result of such failure; and”.

9 **SEC. 217. SHARING OF COMPENSATION.**

10 Section 504 of title 11, United States Code, is  
11 amended by adding at the end the following:

12 “(c) This section shall not apply with respect to shar-  
13 ing, or agreeing to share, compensation with a bona fide  
14 public service attorney referral program that operates in  
15 accordance with non-Federal law regulating attorney re-  
16 ferral services and with rules of professional responsibility  
17 applicable to attorney acceptance of referrals.”.

18 **SEC. 218. PRIORITY FOR ADMINISTRATIVE EXPENSES.**

19 Section 503(b) of title 11, United States Code, is  
20 amended—

21 (1) by deleting “and” at the end of paragraph  
22 (5);

23 (2) by striking the period at the end of para-  
24 graph (6) and inserting “; and”;

1           (3) by inserting the following after paragraph  
2           (6):

3           “(7) with respect to a nonresidential real prop-  
4           erty lease previously assumed under section 365,  
5           and subsequently rejected, a sum equal to all mone-  
6           tary obligations due, excluding those arising from or  
7           relating to a failure to operate or penalty provisions,  
8           for the period of one year following the later of the  
9           rejection date or date of actual turnover of the  
10          premises, without reduction or setoff for any reason  
11          whatsoever except for sums actually received or to be  
12          received from a nondebtor; and the claim for remain-  
13          ing sums due for the balance of the term of the lease  
14          shall be a claim under section 502(b)(6).”.

15       **TITLE III—GENERAL BUSINESS**  
16       **BANKRUPTCY PROVISIONS**

17       **SEC. 301. DEFINITION OF DISINTERESTED PERSON.**

18          Section 101(14) of title 11, United States Code, is  
19       amended to read as follows:

20               “(14) ‘disinterested person’ means a person  
21       that—

22                       “(A) is not a creditor, an equity security  
23       holder, or an insider;



1           “(B) is not and was not, within 2 years be-  
2           fore the date of the filing of the petition, a di-  
3           rector, officer, or employee of the debtor; and

4           “(C) does not have an interest materially  
5           adverse to the interest of the estate or of any  
6           class of creditors or equity security holders, by  
7           reason of any direct or indirect relationship to,  
8           connection with, or interest in, the debtor, or  
9           for any other reason;”.

10 **SEC. 302. MISCELLANEOUS IMPROVEMENTS.**

11           (a) WHO MAY BE A DEBTOR.—Section 109 of title  
12 11, United States Code, is amended by adding at the end  
13 the following:

14           “(h)(1) Subject to paragraphs (2) and (3) and not-  
15 withstanding any other provision of this section, an indi-  
16 vidual may not be a debtor under this title unless that  
17 individual has, during the 90-day period preceding the  
18 date of filing of the petition of that individual, received  
19 credit counseling, including, at a minimum, participation  
20 in an individual or group briefing that outlined the oppor-  
21 tunities for available credit counseling and assisted that  
22 individual in performing an initial budget analysis,  
23 through a credit counseling program (offered through an  
24 approved credit counseling service described in section  
25 111(a)).

1       “(2)(A) Paragraph (1) shall not apply with respect  
2 to a debtor who resides in a district for which the United  
3 States trustee or bankruptcy administrator of the bank-  
4 ruptcy court of that district determines that the approved  
5 credit counseling services for that district are not reason-  
6 ably able to provide adequate services to the additional  
7 individuals who would otherwise seek credit counseling  
8 from those programs by reason of the requirements of  
9 paragraph (1).

10       “(B) Each United States trustee or bankruptcy ad-  
11 ministrator that makes a determination described in sub-  
12 paragraph (A) shall review that determination not later  
13 than one year after the date of that determination, and  
14 not less frequently than every year thereafter.

15       “(3)(A) Subject to subparagraph (B), the require-  
16 ments of paragraph (1) shall not apply with respect to  
17 a debtor who submits to the court a certification that—

18               “(i) describes exigent circumstances that merit  
19 a waiver of the requirements of paragraph (1);

20               “(ii) states that the debtor requested credit  
21 counseling services from an approved credit counsel-  
22 ing service, but was unable to obtain the services re-  
23 ferred to in paragraph (1) during the 5-day period  
24 beginning on the date on which the debtor made

1       that request or that the exigent circumstances re-  
2       quire filing before such 5-day period expires; and

3           “(iii) is satisfactory to the court.

4       “(B) With respect to a debtor, an exemption under  
5       subparagraph (A) shall cease to apply to that debtor on  
6       the date on which the debtor meets the requirements of  
7       paragraph (1), but in no case may the exemption apply  
8       to that debtor after the date that is 30 days after the debt-  
9       or files a petition.”.

10       (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title  
11   11, United States Code, is amended—

12           (1) in paragraph (9), by striking “or” at the  
13       end;

14           (2) in paragraph (10), by striking the period  
15       and inserting “; or”; and

16           (3) by adding at the end the following:

17           “(11) after the filing of the petition, the debtor  
18       failed to complete an instructional course concerning  
19       personal financial management described in section  
20       111 unless the debtor resides in a district for which  
21       the United States trustee or bankruptcy adminis-  
22       trator of the bankruptcy court of that district deter-  
23       mines that the approved instructional courses are  
24       not adequate to provide service to the additional in-  
25       dividuals who would be required to compete the in-

1 instructional course by reason of the requirements of  
2 this section. Each United States trustee or bank-  
3 ruptcy administrator that makes such a determina-  
4 tion shall review that determination not later than 1  
5 year after the date of that determination, and not  
6 less frequently than every year thereafter.”.

7 (c) CHAPTER 13 DISCHARGE.—Section 1328 of title  
8 11, United States Code, as amended by section 137, is  
9 amended by adding at the end the following:

10 “(g) The court shall not grant a discharge under this  
11 section to a debtor, unless after filing a petition the debtor  
12 has completed an instructional course concerning personal  
13 financial management described in section 111.

14 “(h) Subsection (g) shall not apply with respect to  
15 a debtor who resides in a district for which the United  
16 States trustee or bankruptcy administrator of the bank-  
17 ruptcy court of that district determines that the approved  
18 instructional courses are not adequate to provide service  
19 to the additional individuals who would be required to  
20 complete the instructional course by reason of the require-  
21 ments of this section.

22 “(i) Each United States trustee or bankruptcy ad-  
23 ministrator that makes a determination described in sub-  
24 section (h) shall review that determination not later than

1 1 year after the date of that determination, and not less  
2 frequently than every year thereafter.”.

3 (d) DEBTOR’S DUTIES.—Section 521 of title 11,  
4 United States Code, as amended by sections 604 and 120,  
5 is amended by adding at the end the following:

6 “(d) In addition to the requirements under subsection  
7 (a), an individual debtor shall file with the court—

8 “(1) a certificate from the credit counseling  
9 service that provided the debtor services under sec-  
10 tion 109(h); and

11 “(2) a copy of the debt repayment plan, if any,  
12 developed under section 109(h) through the credit  
13 counseling service referred to in paragraph (1).”.

14 (e) GENERAL PROVISIONS.—

15 (1) IN GENERAL.—Chapter 1 of title 11, United  
16 States Code, is amended by adding at the end the  
17 following:

18 “§ 111. Credit counseling services; financial manage-  
19 ment instructional courses

20 “The clerk of each district shall maintain a list of  
21 credit counseling services that provide 1 or more programs  
22 described in section 109(h) and a list of instructional  
23 courses concerning personal financial management that  
24 have been approved by—

25 “(1) the United States trustee; or

1           “(2) the bankruptcy administrator for the dis-  
2       trict.”.

3           (2) CLERICAL AMENDMENT.—The table of sec-  
4       tions at the beginning of chapter 1 of title 11,  
5       United States Code, is amended by adding at the  
6       end the following:

“111. Credit counseling services; financial management instructional courses.”.

7           (e) DEFINITIONS.—Section 101 of title 11, United  
8       States Code, is amended—

9           (1) by inserting after paragraph (13) the fol-  
10      lowing:

11           “(13A) ‘debtor’s principal residence’ means a  
12      residential structure including incidental property  
13      when the structure contains 1 to 4 units, whether or  
14      not that structure is attached to real property, and  
15      includes, without limitation, an individual condomin-  
16      ium or cooperative unit or mobile or manufactured  
17      home or trailer;”;

18           (2) by inserting after paragraph (27A), as  
19      added by section 318 of this Act, the following:

20           “(27B) ‘incidental property’ means property in-  
21      cidental to such residence including, without limita-  
22      tion, property commonly conveyed with a principal  
23      residence where the real estate is located, window  
24      treatments, carpets, appliances and equipment lo-  
25      cated in the residence, and easements, appur-

1       tenances, fixtures, rents, royalties, mineral rights, oil  
2       and gas rights, escrow funds and insurance pro-  
3       ceeds;”;

4               (3) in section 362(b), as amended by sections  
5       117, 118, 132, 136, 141 203, 818, and 1007,—

6               (A) in paragraph (28) by striking “or” at  
7       the end thereof;

8               (B) in paragraph (29) by striking the pe-  
9       riod at the end and inserting “; or”; and

10              (C) by inserting after paragraph (29) the  
11       following:

12              “(30) under subsection (a), until a prepetition  
13       default is cured fully in a case under chapter 13 of  
14       this title by actual payment of all arrears as re-  
15       quired by the plan, of the postponement, continu-  
16       ation or other similar delay of a prepetition fore-  
17       closure proceeding or sale in accordance with appli-  
18       cable nonbankruptcy law, but nothing herein shall  
19       imply that such postponement, continuation or other  
20       similar delay is a violation of the stay under sub-  
21       section (a).”; and

22              (4) by amending section 1322(b)(2) to read as  
23       follows:

24              “(2) modify the rights of holders of secured  
25       claims, other than a claim secured primarily by a se-

1       curity interest in property used as the debtor's prin-  
2       cipal residence at any time during 180 days prior to  
3       the filing of the petition, or of holders of unsecured  
4       claims, or leave unaffected the rights of holders of  
5       any class of claims;”.

6       (f) LIMITATION.—Section 362 of title 11, United  
7       States Code, is amended by adding at the end the follow-  
8       ing:

9       “(j) If one case commenced under chapter 7, 11, or  
10      13 of this title is dismissed due to the creation of a debt  
11      repayment plan administered by a credit counseling agen-  
12      cy approved pursuant to section 111 of this title, then for  
13      purposes of section 362(c)(3) of this title the subsequent  
14      case commenced under any such chapter shall not be pre-  
15      sumed to be filed not in good faith.”.

16      (g) RETURN OF GOODS SHIPPED.—Section 546(g) of  
17      title 11, United States Code, as added by section 222(a)  
18      of Public Law 103–394, is amended to read as follows:

19      “(h) Notwithstanding the rights and powers of a  
20      trustee under sections 544(a), 545, 547, 549, and 553 of  
21      this title, if the court determines on a motion by the trust-  
22      ee made not later than 120 days after the date of the order  
23      for relief in a case under chapter 11 of this title and after  
24      notice and hearing, that a return is in the best interests  
25      of the estate, the debtor, with the consent of the creditor,



1 and subject to the prior rights, if any, of third parties in  
2 such goods, may return goods shipped to the debtor by  
3 the creditor before the commencement of the case, and the  
4 creditor may offset the purchase price of such goods  
5 against any claim of the creditor against the debtor that  
6 arose before the commencement of the case.”.

7 **SEC. 303. EXTENSIONS.**

8 Section 302(d)(3) of the Bankruptcy, Judges, United  
9 States Trustees, and Family Farmer Bankruptcy Act of  
10 1986 (28 U.S.C. 581 note) is amended—

11 (1) in subparagraph (A), in the matter follow-  
12 ing clause (ii), by striking “or October 1, 2002,  
13 whichever occurs first”; and

14 (2) in subparagraph (F)—

15 (A) in clause (i)—

16 (i) in subclause (II), by striking “or  
17 October 1, 2002, whichever occurs first”;  
18 and

19 (ii) in the matter following subclause  
20 (II), by striking “October 1, 2003, or”;  
21 and

22 (B) in clause (ii), in the matter following  
23 subclause (II)—

24 (i) by striking “before October 1,  
25 2003, or”; and

1 (ii) by striking “, whichever occurs  
2 first”.

3 **SEC. 304. LOCAL FILING OF BANKRUPTCY CASES.**

4 Section 1408 of title 28, United States Code, is  
5 amended—

6 (1) by striking “Except” and inserting “(a) Ex-  
7 cept”; and

8 (2) by adding at the end the following:

9 “(b) For the purposes of subsection (a), if the debtor  
10 is a corporation, the domicile and residence of the debtor  
11 are conclusively presumed to be where the debtor’s prin-  
12 cipal place of business in the United States is located.”.

13 **SEC. 305. PERMITTING ASSUMPTION OF CONTRACTS.**

14 (a) Section 365(c) of title 11, United States Code,  
15 is amended to read as follows:

16 “(c)(1) The trustee may not assume or assign an ex-  
17 ecutory contract or unexpired lease of the debtor, whether  
18 or not the contract or lease prohibits or restricts assign-  
19 ment of rights or delegation of duties, if—

20 “(A)(i) applicable law excuses a party to the  
21 contract or lease from accepting performance from  
22 or rendering performance to an assignee of the con-  
23 tract or lease, whether or not the contract or lease  
24 prohibits or restricts assignment of rights or delega-  
25 tion of duties; and

1           “(ii) the party does not consent to the assump-  
2           tion or assignment; or

3           “(B) the contract is a contract to make a loan,  
4           or extend other debt financing or financial accom-  
5           modations, to or for the benefit of the debtor, or to  
6           issue a security of the debtor.

7           “(2) Notwithstanding paragraph (1)(A) and applica-  
8           ble nonbankruptcy law, in a case under chapter 11 of this  
9           title, a trustee in a case in which a debtor is a corporation,  
10          or a debtor in possession, may assume an executory con-  
11          tract or unexpired lease of the debtor, whether or not the  
12          contract or lease prohibits or restricts assignment of rights  
13          or delegation of duties.

14          “(3) The trustee may not assume or assign an unex-  
15          pired lease of the debtor of nonresidential real property,  
16          whether or not the contract or lease prohibits or restricts  
17          assignment of rights or delegation of duties, if the lease  
18          has been terminated under applicable nonbankruptcy law  
19          before the order for relief.”.

20          (b) Section 365(d) of title 11, United States Code,  
21          is amended by striking paragraphs (5), (6), (7), (8), and  
22          (9), and redesignating paragraph (10) as paragraph (5).

23          (c) Section 365(e) of title 11, United States Code,  
24          is amended to read as follows:

1       “(e)(1) Notwithstanding a provision in an executory  
2 contract or unexpired lease, or in applicable law, an execu-  
3 tory contract or unexpired lease of the debtor may not be  
4 terminated or modified, and any right or obligation under  
5 such contract or lease may not be terminated or modified,  
6 at any time after the commencement of the case solely  
7 because of a provision in such contract or lease that is  
8 conditioned on—

9               “(A) the insolvency or financial condition of the  
10 debtor at any time before the closing of the case;

11              “(B) the commencement of a case under this  
12 title; or

13              “(C) the appointment of or taking possession by  
14 a trustee in a case under this title or a custodian be-  
15 fore such commencement.

16       “(2) Paragraph (1) does not apply to an executory  
17 contract or unexpired lease of the debtor if the trustee  
18 may not assume or assign, and the debtor in possession  
19 may not assume, the contract or lease by reason of the  
20 provisions of subsection (c) of this section.”.

21       (d) Section 365(f)(1) of title 11, United States Code,  
22 is amended by striking the semicolon and all that follows  
23 through “event”.

1           **TITLE IV SMALL BUSINESS**  
2           **BANKRUPTCY PROVISIONS**

3   **SEC. 401. FLEXIBLE RULES FOR DISCLOSURE STATEMENT**  
4           **AND PLAN.**

5           (a) Section 1125(a)(1) of title 11, United States  
6 Code, is amended by inserting before the semicolon follow-  
7 ing:

8           “and in determining whether a disclosure statement pro-  
9 vides adequate information, the court shall consider the  
10 complexity of the case, the benefit of additional informa-  
11 tion to creditors and other parties in interest, and the cost  
12 of providing additional information”.

13          (b) Section 1125(f) of title 11, United States Code,  
14 is amended to read as follows:

15          “(f) Notwithstanding subsection (b)—

16                 “(1) the court may determine that the plan  
17 itself provides adequate information and that a sepa-  
18 rate disclosure statement is not necessary;

19                 “(2) the court may approve a disclosure state-  
20 ment submitted on standard forms approved by the  
21 court or adopted pursuant to section 2075 of title  
22 28; and

23                 “(3)(A) the court may conditionally approve a  
24 disclosure statement subject to final approval after  
25 notice and a hearing;

1           “(B) acceptances and rejections of a plan may  
2       be solicited based on a conditionally approved disclo-  
3       sure statement if the debtor provides adequate infor-  
4       mation to each holder of a claim or interest that is  
5       solicited, but a conditionally approved disclosure  
6       statement shall be mailed not less than 20 days be-  
7       fore the date of the hearing on confirmation of the  
8       plan; and

9           “(C) the hearing on the disclosure statement may be  
10      combined with the hearing on confirmation of a plan.”.

11   **SEC. 402. DEFINITIONS.**

12       (a) DEFINITIONS. Section 101 of title 11, United  
13      States Code, is amended by striking paragraph (51C) and  
14      inserting the following:

15           “(51C) ‘small business case’ means a case filed  
16       under chapter 11 of this title in which the debtor is  
17       a small business debtor; and

18           “(51D) ‘small business debtor’ means (A) a  
19       person (including affiliates of such person that are  
20       also debtors under this title) that has aggregate non-  
21       contingent, liquidated secured and unsecured debts  
22       as of the date of the petition or the order for relief  
23       in an amount not more than \$4,000,000 (excluding  
24       debts owed to 1 or more affiliates or insiders), ex-  
25       cept that if a group of affiliated debtors has aggre-

1 gate noncontingent liquidated secured and unsecured  
2 debts greater than \$4,000,000 (excluding debt owed  
3 to 1 or more affiliates or insiders), then no member  
4 of such group is a small business debtor;”.

5 (b) CONFORMING AMENDMENT.—Section 1102(a)(3)  
6 of title 11, United States Code, is amended by inserting  
7 “debtor” after “small business” .

8 **SEC. 403. STANDARD FORM DISCLOSURE STATEMENT AND**  
9 **PLAN.**

10 The Advisory Committee on Bankruptcy Rules of the  
11 Judicial Conference of the United States shall, within a  
12 reasonable period of time after the date of the enactment  
13 of this Act, propose for adoption standard form disclosure  
14 statements and plans of reorganization for small business  
15 debtors (as defined in section 101 of title 11, United  
16 States Code, as amended by this Act), designed to achieve  
17 a practical balance between—

18 (1) the reasonable needs of the courts, the  
19 United States trustee, creditors, and other parties in  
20 interest for reasonably complete information; and

21 (2) economy and simplicity for debtors.

22 **SEC. 404. UNIFORM NATIONAL REPORTING REQUIRE-**  
23 **MENTS.**

24 (a) REPORTING REQUIRED.—

1           (1) Title 11 of the United States Code is  
2       amended by inserting after section 307 the follow-  
3       ing:

4   **“§ Debtor reporting requirements**

5       “A small business debtor shall file periodic financial  
6   and other reports containing information including—

7           “(1) the debtor’s profitability, that is, approxi-  
8       mately how much money the debtor has been earn-  
9       ing or losing during current and recent fiscal peri-  
10      ods;

11          “(2) reasonable approximations of the debtor’s  
12      projected cash receipts and cash disbursements over  
13      a reasonable period;

14          “(3) comparisons of actual cash receipts and  
15      disbursements with projections in prior reports; and

16          “(4) whether the debtor is—

17              “(A) in compliance in all material respects  
18          with postpetition requirements imposed by this  
19          title and the Federal Rules of Bankruptcy Pro-  
20          cedure; and

21              “(B) timely filing tax returns and paying  
22          taxes and other administrative claims when due,  
23          and, if not, what the failures are and how, at  
24          what cost, and when the debtor intends to rem-  
25          edy such failures; and



1           “(5) such other matters as are in the best inter-  
2           ests of the debtor and creditors, and in the public  
3           interest in fair and efficient procedures under chap-  
4           ter 11 of this title.”.

5           (2) The table of sections of chapter 3 of title  
6           11, United States Code, is amended by inserting  
7           after the item relating to section 307 the following:  
          “308. Debtor reporting requirements.”.

8           (b) EFFECTIVE DATE.—The amendments made by  
9           subsection (a) shall take effect 60 days after the date on  
10          which rules are prescribed pursuant to section 2075, title  
11          28, United States Code to establish forms to be used to  
12          comply with section 308 of title 11, United States Code,  
13          as added by subsection (a).

14   **SEC. 405. UNIFORM REPORTING RULES AND FORMS FOR**  
15                   **SMALL BUSINESS CASES.**

16          (a) PROPOSAL OF RULES AND FORMS.—The Advi-  
17          sory Committee on Bankruptcy Rules of the Judicial Con-  
18          ference of the United States shall propose for adoption  
19          amended Federal Rules of Bankruptcy Procedure and Of-  
20          ficial Bankruptcy Forms to be used by small business  
21          debtors to file periodic financial and other reports contain-  
22          ing information, including information relating to—

23               (1) the debtor’s profitability;

1           (2) the debtor's cash receipts and disburse-  
2       ments; and

3           (3) whether the debtor is timely filing tax re-  
4       turns and paying taxes and other administrative  
5       claims when due.

6       (b) PURPOSE.—The rules and forms proposed under  
7       subsection (a) shall be designed to achieve a practical bal-  
8       ance between—

9           (1) the reasonable needs of the bankruptcy  
10       court, the United States trustee, creditors, and other  
11       parties in interest for reasonably complete informa-  
12       tion;

13           (2) the small business debtor's interest that re-  
14       quired reports be easy and inexpensive to complete;  
15       and

16           (3) the interest of all parties that the required  
17       reports help the small business debtor to understand  
18       its financial condition and plan its future.

19       **SEC. 406. DUTIES IN SMALL BUSINESS CASES.**

20       (a) DUTIES IN CHAPTER 11 CASES.—Title 11 of the  
21       United States Code is amended by inserting after section  
22       1114 the following:

1   **“§ 1115. Duties of trustee or debtor in possession in**  
2                   **small business cases**

3           “(a) In a small business case, a trustee or the debtor  
4 in possession, in addition to the duties provided in this  
5 title and as otherwise required by law, shall—

6                   “(1) append to the voluntary petition or, in an  
7 involuntary case, file within 3 days after the date of  
8 the order for relief—

9                           “(A) its most recent balance sheet, state-  
10 ment of operations, cash-flow statement, Fed-  
11 eral income tax return; or

12                           “(B) a statement made under penalty of  
13 perjury that no balance sheet, statement of op-  
14 erations, or cash-flow statement has been pre-  
15 pared and no Federal tax return has been filed;

16                   “(2) attend, through its responsible individual,  
17 meetings scheduled by the court or the United  
18 States trustee, including initial debtor interviews  
19 and meetings of creditors convened under section  
20 341 of this title;

21                   “(3) timely file all schedules and statements of  
22 financial affairs, unless the court, after notice and a  
23 hearing, grants an extension, which shall not extend  
24 such time period to a date later than 30 days after  
25 the date of the order for relief, absent extraordinary  
26 and compelling circumstances;

1           “(4) file all postpetition financial and other re-  
2           ports required by the Federal Rules of Bankruptcy  
3           Procedure or by local rule of the district court;

4           “(5) subject to section 363(c)(2) of this title,  
5           maintain insurance customary and appropriate to  
6           the industry;

7           “(6)(A) timely file tax returns;

8           “(B) subject to section 363(c)(2) of this title,  
9           timely pay all administrative expense tax claims, ex-  
10          cept those being contested by appropriate proceed-  
11          ings being diligently prosecuted; and

12          “(C) subject to section 363(c)(2) of this title,  
13          establish 1 or more separate deposit accounts not  
14          later than 10 business days after the date of order  
15          for relief (or as soon thereafter as possible if all  
16          banks contacted decline the business) and deposit  
17          therein, not later than 1 business day after receipt  
18          thereof or a responsible time set by the court, all  
19          taxes payable for periods beginning after the date  
20          the case is commenced that are collected or withheld  
21          by the debtor for governmental units unless the  
22          court waives this requirement after notice and hear-  
23          ing; and

24          “(7) allow the United States trustee, or its des-  
25          ignated representative, to inspect the debtor’s busi-

1       ness premises, books, and records at reasonable  
2       times, after reasonable prior written notice, unless  
3       notice is waived by the debtor.”.

4       (b) TECHNICAL AMENDMENT.—The table of sections  
5       of chapter 11, United States Code, is amended by insert-  
6       ing after the item relating to section 1114 the following:

      “1115. Duties of trustee or debtor in possession in small business cases.”.

7       **SEC. 407. PLAN FILING AND CONFIRMATION DEADLINES.**

8       Section 1121(e) of title 11, United States Code, is  
9       amended to read as follows:

10       “(e) In a small business case—

11               “(1) only the debtor may file a plan until after  
12       90 days after the date of the order for relief, unless  
13       a trustee has been appointed under this chapter, or  
14       unless the court, on request of a party in interest  
15       and after notice and hearing, shortens such time;

16               “(2) the debtor shall file a plan, and any nec-  
17       essary disclosure statement, not later than 90 days  
18       after the date of the order for relief, unless the  
19       United States Trustee has appointed under section  
20       1102(a)(1) of this title a committee of unsecured  
21       creditors that the court has determined, before the  
22       90 days has expired, is sufficiently active and rep-  
23       resentative to provide effective oversight of the debt-  
24       or; and

1           “(3) the time periods specified in paragraphs  
2           (1) and (2) of this subsection and the time fixed in  
3           section 1129(e) of this title for confirmation of a  
4           plan, may be extended only as follows:

5           “(A) On request of a party in interest  
6           made within the respective periods, and after  
7           notice and hearing, the court may for cause  
8           grant one or more extensions, cumulatively not  
9           to exceed 60 days, if the movant establishes—

10           “(i) that no cause exists to dismiss or  
11           convert the case or appoint a trustee or ex-  
12           aminer under subparagraphs (A) (I) of  
13           section 1112(b) of this title; and

14           “(ii) that there is a reasonable possi-  
15           bility the court will confirm a plan within  
16           a reasonable time;

17           “(B) On request of a party in interest  
18           made within the respective periods, and after  
19           notice and hearing, the court may for cause  
20           grant one or more extensions in excess of those  
21           authorized under subparagraph (A) of this  
22           paragraph, if the movant establishes:

23           “(i) that no cause exists to dismiss or  
24           convert the case or appoint a trustee or ex-

1            aminer under subparagraphs (A) (I) of  
2            section 1112(b)(3) of this title; and

3            “(ii) that it is more likely than not  
4            that the court will confirm a plan within a  
5            reasonable time; and

6            “(C) a new deadline shall be imposed  
7            whenever an extension is granted.”.

8    **SEC. 408. PLAN CONFIRMATION DEADLINE.**

9            Section 1129 of title 11, United States Code, is  
10          amended by adding at the end the following:

11          “(e) In a small business case, the debtor shall confirm  
12          a plan not later than 150 days after the date of the order  
13          for relief unless—

14                “(1) the United States Trustee has appointed,  
15          under section 1102(a)(1) of this title, a committee  
16          of unsecured creditors that the court has deter-  
17          mined, before the 150 days has expired, is suffi-  
18          ciently active and representative to provide effective  
19          oversight of the debtor; or

20                “(2) such 150-day period is extended as pro-  
21          vided in section 1121(e)(3) of this title.”.

22    **SEC. 409. PROHIBITION AGAINST EXTENSION OF TIME.**

23          Section 105(d) of title 11, United States Code, is  
24          amended—

1 (1) in paragraph (2)(B)(vi) by striking the pe-  
2 riod at the end and inserting “; and”; and

3 (2) by adding at the end the following:

4 “(3) in a small business case, not extend the  
5 time periods specified in sections 1121(e) and  
6 1129(e) of this title except as provided in section  
7 1121(e)(3) of this title.”.

8 **SEC. 410. DUTIES OF THE UNITED STATES TRUSTEE.**

9 (a) DUTIES OF THE UNITED STATES TRUSTEE.—

10 Section 586(a) of title 28, United States Code, is  
11 amended—

12 (1) in paragraph (3)—

13 (A) in subparagraph (G) by striking “and  
14 at the end”;

15 (B) by redesignating subparagraph (H) as  
16 subparagraph (I); and

17 (C) by inserting after subparagraph (G)  
18 the following:

19 “(H) in small business cases (as defined in  
20 section 101 of title 11), performing the addi-  
21 tional duties specified in title 11 pertaining to  
22 such cases”;

23 (2) in paragraph (5) by striking “and at the  
24 end”;



1           (3) in paragraph (6) by striking the period at  
2           the end and inserting “; and”; and

3           (4) by inserting after paragraph (7) the follow-  
4           ing:

5           “(7) in each of such small business cases—

6                   “(A) conduct an initial debtor interview as  
7                   soon as practicable after the entry of order for  
8                   relief but before the first meeting scheduled  
9                   under section 341(a) of title 11 at which time  
10                  the United States trustee shall begin to inves-  
11                  tigate the debtor’s viability, inquire about the  
12                  debtor’s business plan, explain the debtor’s obli-  
13                  gations to file monthly operating reports and  
14                  other required reports, attempt to develop an  
15                  agreed scheduling order, and inform the debtor  
16                  of other obligations;

17                   “(B) when determined to be appropriate  
18                   and advisable, visit the appropriate business  
19                   premises of the debtor and ascertain the state  
20                   of the debtor’s books and records and verify  
21                   that the debtor has filed its tax returns; and

22                   “(C) review and monitor diligently the  
23                   debtor’s activities, to identify as promptly as  
24                   possible whether the debtor will be unable to  
25                   confirm a plan; and

1           “(8) in cases in which the United States trustee  
2       finds material grounds for any relief under section  
3       1112 of title 11, the United States trustee shall  
4       apply promptly to the court for relief.”.

5   **SEC. 411. SCHEDULING CONFERENCES.**

6       Section 105(d) of title 11, United States Code, is  
7   amended—

8           (1) in the matter preceding paragraph (1) by  
9       striking “, may”;

10          (2) by amending paragraph (1) to read as fol-  
11       lows:

12           “(1) shall hold such status conferences as are  
13       necessary to further the expeditious and economical  
14       resolution of the case; and”; and

15           (3) in paragraph (2) by striking “unless incon-  
16       sistent with another provision of this title or with  
17       applicable Federal Rules of Bankruptcy Procedure”,  
18       and inserting “may”.

19   **SEC. 412. SERIAL FILER PROVISIONS.**

20       Section 362 of title 11, United States Code, as  
21   amended by section 302, is amended—

22           (1) in subsection (i) as so redesignated by sec-  
23       tion 122—

24           (A) by striking “An” and inserting “(1)  
25       Except as provided in paragraph (2), an”; and

1 (B) by adding at the end the following:

2 “(2) If such violation is based on an action taken by  
3 an entity in the good-faith belief that subsection (h) ap-  
4 plies to the debtor, then recovery under paragraph (1)  
5 against such entity shall be limited to actual damages.”;  
6 and

7 (2) by inserting after subsection (j), as added  
8 by section 302, the following:

9 “(k)(1) Except as provided in paragraph (2) of this  
10 subsection, the provisions of subsection (a) of this section  
11 shall not apply in a case in which the debtor—

12 “(A) is a debtor in a case under this title pend-  
13 ing at the time the petition is filed;

14 “(B) was a debtor in a case under this title  
15 which was dismissed for any reason by an order that  
16 became final in the 2-year period ending on the date  
17 of the order for relief entered with respect to the pe-  
18 tition;

19 “(C) was a debtor in a case under this title in  
20 which a chapter 11, 12, or 13 plan was confirmed  
21 in the 2-year period ending on the date of the order  
22 for relief entered with respect to the petition; or

23 “(D) is an entity that has succeeded to sub-  
24 stantially all of the assets or business of a debtor de-  
25 scribed in subparagraph (A), (B), or (C).

1 “(2) This subsection shall not apply—

2 “(A) to a case initiated by an involuntary peti-  
3 tion filed by a creditor that is not an insider or affil-  
4 iate of the debtor; or

5 “(B) after such time as the debtor, after notice  
6 and a hearing, demonstrates by a preponderance of  
7 the evidence, that the filing of such petition resulted  
8 from circumstances beyond the control of the debtor  
9 and not foreseeable at the time the earlier case was  
10 filed; and that it is more likely than not that the  
11 court will confirm a plan, other than a liquidating  
12 plan, within a reasonable time.”.

13 **SEC. 413. EXPANDED GROUNDS FOR DISMISSAL OR CON-**  
14 **VERSION AND APPOINTMENT OF TRUSTEE**  
15 **OR EXAMINER.**

16 (a) EXPANDED GROUNDS FOR DISMISSAL OR CON-  
17 VERSION.—Section 1112(b) of title 11, United States  
18 Code, is amended to read as follows:

19 “(b)(1) Except as provided in paragraphs (2) and (4)  
20 of this subsection, and in subsection (c) of this section,  
21 on request of a party in interest, and after notice and a  
22 hearing, the court shall convert a case under this chapter  
23 to a case under chapter 7 of this title or dismiss a case  
24 under this chapter, or appoint a trustee or examiner under  
25 section 1104(e) of this title, whichever is in the best inter-

1 est of creditors and the estate, if the movant establishes  
2 cause.

3 “(2) The court may decline to grant the relief speci-  
4 fied in paragraph (1) of this subsection if the debtor or  
5 another party in interest objects and establishes by a pre-  
6 ponderance of the evidence that—

7 “(A) it is more likely than not that a plan will  
8 be confirmed within a time as fixed by this title or  
9 by order of the court entered pursuant to section  
10 1121(e)(3), or within a reasonable time if no time  
11 has been fixed; and

12 “(B) if the cause is an act or omission of the  
13 debtor that—

14 “(i) there exists a reasonable justification  
15 for the act or omission; and

16 “(ii) the act or omission will be cured with-  
17 in a reasonable time fixed by the court not to  
18 exceed 30 days after the court decides the mo-  
19 tion, unless the movant expressly consents to a  
20 continuance for a specific period of time, or  
21 compelling circumstances beyond the control of  
22 the debtor justify an extension.

23 “(3) For purposes of this subsection, cause  
24 includes—

1           “(A) substantial or continuing loss to or dimi-  
2           nution of the estate;

3           “(B) gross mismanagement of the estate;

4           “(C) failure to maintain insurance that poses a  
5           material risk to the estate or the public;

6           “(D) unauthorized use of cash collateral harm-  
7           ful to 1 or more creditors;

8           “(E) failure to comply with an order of the  
9           court;

10          “(F) failure timely to satisfy any filing or re-  
11          porting requirement established by this title or by  
12          any rule applicable to a case under this chapter;

13          “(G) failure to attend the meeting of creditors  
14          convened under section 341(a) of this title;

15          “(H) failure timely to provide information or  
16          attend meetings reasonably requested by the United  
17          States trustee or bankruptcy administrator;

18          “(I) failure timely to pay taxes due after the  
19          date of the order for relief or to file tax returns due  
20          after the order for relief;

21          “(J) failure to file a disclosure statement, or to  
22          file or confirm a plan, within the time fixed by this  
23          title or by order of the court;

24          “(K) failure to pay any fees or charges required  
25          under chapter 123 of title 28;

1           “(L) revocation of an order of confirmation  
2           under section 1144 of this title;

3           “(M) inability to effectuate substantial con-  
4           summation of a confirmed plan;

5           “(N) material default by the debtor with re-  
6           spect to a confirmed plan; and

7           “(O) termination of a plan by reason of the oc-  
8           currence of a condition specified in the plan.

9           “(4) The court may grant relief under this subsection  
10          for cause as defined in subparagraphs C, F, G, H, or K  
11          of paragraph 3 of this subsection only upon motion of the  
12          United States trustee or bankruptcy administrator or  
13          upon the court s own motion.

14          “(5) The court shall commence the hearing on any  
15          motion under this subsection not later than 30 days after  
16          filing of the motion, and shall decide the motion within  
17          15 days after commencement of the hearing, unless the  
18          movant expressly consents to a continuance for a specific  
19          period of time or compelling circumstances prevent the  
20          court from meeting the time limits established by this  
21          paragraph.”.

22          (b) ADDITIONAL GROUNDS FOR APPOINTMENT OF  
23          TRUSTEE OR EXAMINER.—Section 1104 of title 11,  
24          United States Code, is amended by adding at the end the  
25          following:

1       “(e) If grounds exist to convert or dismiss the case  
2 under section 1112 of this title, the court may instead ap-  
3 point a trustee or examiner, if it determines that such ap-  
4 pointment is in the best interests of creditors and the es-  
5 tate.”.

6 **SEC. 414. STUDY OF OPERATION OF TITLE 11 OF THE**  
7 **UNITED STATES CODE WITH RESPECT TO**  
8 **SMALL BUSINESSES.**

9       Not later than 2 years after the date of the enact-  
10 ment of this Act, the Administrator of the Small Business  
11 Administration, in consultation with the Attorney General,  
12 the Director of the Administrative Office of United States  
13 Trustees, and the Director of the Administrative Office  
14 of the United States Courts, shall—

15       (1) conduct a study to determine—

16               (A) the internal and external factors that  
17 cause small businesses, especially sole propri-  
18 etorships, to become debtors in cases under title  
19 11 of the United States Code and that cause  
20 certain small businesses to successfully com-  
21 plete cases under chapter 11 of such title; and

22               (B) how Federal laws relating to bank-  
23 ruptcy may be made more effective and efficient  
24 in assisting small businesses to remain viable;  
25 and



1           (2) submit to the President pro tempore of the  
2       Senate and the Speaker of the House of Representa-  
3       tives a report summarizing that study.

4   **SEC. 415. PAYMENT OF INTEREST.**

5       Section 362(d)(3) of title 11, United States Code, is  
6   amended—

7           (1) by inserting “or 30 days after the court de-  
8       termines that the debtor is subject to this para-  
9       graph, whichever is later” after “90-day period”;  
10      and

11          (2) by amending subparagraph (B) to read as  
12      follows:

13               “(B) the debtor has commenced monthly  
14       payments (which payments may, in the debtor’s  
15       sole discretion, notwithstanding section  
16       363(c)(2) of this title, be made from rents or  
17       other income generated before or after the com-  
18       mencement of the case by or from the property)  
19       to each creditor whose claim is secured by such  
20       real estate (other than a claim secured by a  
21       judgment lien or by an unmatured statutory  
22       lien), which payments are in an amount equal  
23       to interest at the then-applicable nondefault  
24       contract rate of interest on the value of the  
25       creditor’s interest in the real estate; or”.

1                   **TITLE V—MUNICIPAL**  
2                   **BANKRUPTCY PROVISIONS**

3   **SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETI-**  
4                   **TION.**

5           (a) TECHNICAL AMENDMENT RELATING TO MUNICI-  
6   PALITIES.—Section 921(d) of title 11, United States  
7   Code, is amended by inserting “notwithstanding section  
8   301(b)” before the period at the end.

9           (b) CONFORMING AMENDMENT.—Section 301 of title  
10   11, United States Code, is amended—

11           (1) by inserting “(a)” before “A voluntary”;  
12           and

13           (2) by amending the last sentence to read as  
14           follows:

15           “(b) The commencement of a voluntary case under  
16   a chapter of this title constitutes an order for relief under  
17   such chapter.”.

18   **SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAP-**  
19                   **TER 9.**

20           Section 901(a) of title 11, United States Code, is  
21   amended—

22           (1) by inserting “555, 556,” after “553,”; and

23           (2) by inserting “559, 560, 561, 562” after  
24           “557,”.

1     **TITLE VI—STREAMLINING THE**  
2             **BANKRUPTCY SYSTEM**

3     **SEC. 601. CREDITOR REPRESENTATION AT FIRST MEETING**  
4             **OF CREDITORS.**

5         Section 341(c) of title 11, United States Code, is  
6     amended by inserting after the first sentence the follow-  
7     ing: “Notwithstanding any local court rule, provision of  
8     a State constitution, any other Federal or State law that  
9     is not a bankruptcy law, or other requirement that rep-  
10    resentation at the meeting of creditors under subsection  
11    (a) be by an attorney, a creditor holding a consumer debt  
12    or any representative of the creditor (which may include  
13    an entity or an employee of an entity and may be a rep-  
14    resentative for more than one creditor) shall be permitted  
15    to appear at and participate in the meeting of creditors  
16    and activities related thereto in a case under chapter 7  
17    or 13, either alone or in conjunction with an attorney for  
18    the creditor. Nothing in this subsection shall be construed  
19    to require any creditor to be represented by an attorney  
20    at any meeting of creditors.”.

21    **SEC. 602. AUDIT PROCEDURES.**

22         (a) AMENDMENTS.—Section 586 of title 28, United  
23    States Code, is amended—

24             (1) in subsection (a) by amending striking  
25    paragraph (6) to read as follows:

1           “(6) make such reports as the Attorney General  
2       directs, including the results of audits performed  
3       under subsection (f); and”; and

4           (2) by adding at the end the following:

5       “(f)(1)(A) The Attorney General shall establish pro-  
6       cedures to determine the accuracy, veracity, and complete-  
7       ness of petitions, schedules, and other information which  
8       the debtor is required to provide under sections 521 and  
9       1322 of title 11, and, if applicable, section 111 of title  
10      11, in individual cases filed under chapter 7 or 13 of such  
11      title. Such audits shall be in accordance with generally ac-  
12      cepted auditing standards and performed by independent  
13      certified public accountants or independent licensed public  
14      accountants.

15       “(B) Those procedures shall—

16           “(i) establish a method of selecting appropriate  
17       qualified persons to contract to perform those au-  
18       dits;

19           “(ii) establish a method of randomly selecting  
20       cases to be audited, except that not less than 1 out  
21       of every 250 cases in each Federal judicial district  
22       shall be selected for audit;

23           “(iii) require audits for schedules of income and  
24       expenses which reflect greater than average

1 variances from the statistical norm of the district in  
2 which the schedules were filed; and

3 “(iv) establish procedures for providing, not less  
4 frequently than annually, public information con-  
5 cerning the aggregate results of such audits includ-  
6 ing the percentage of cases, by district, in which a  
7 material misstatement of income or expenditures is  
8 reported.

9 “(2) The United States trustee for each district is  
10 authorized to contract with auditors to perform audits in  
11 cases designated by the United States trustee according  
12 to the procedures established under paragraph (1).

13 “(3)(A) The report of each audit conducted under  
14 this subsection shall be filed with the court and transmit-  
15 ted to the United States trustee. Each report shall clearly  
16 and conspicuously specify any material misstatement of  
17 income or expenditures or of assets identified by the per-  
18 son performing the audit. In any case where a material  
19 misstatement of income or expenditures or of assets has  
20 been reported, the clerk of the bankruptcy court shall give  
21 notice of the misstatement to the creditors in the case.

22 “(B) If a material misstatement of income or expend-  
23 itures or of assets is reported, the United States trustee  
24 shall—

1           “(i) report the material misstatement, if appro-  
2       priate, to the United States Attorney pursuant to  
3       section 3057 of title 18, United States Code; and

4           “(ii) if advisable, take appropriate action, in-  
5       cluding but not limited to commencing an adversary  
6       proceeding to revoke the debtor’s discharge pursuant  
7       to section 727(d) of title 11, United States Code.”.

8       (b) AMENDMENTS TO SECTION 521 OF TITLE 11,  
9       U.S.C.—Section 521(a) of title 11, United States Code,  
10      as amended by section 603, is amended in paragraphs (3)  
11      and (4) by adding “or an auditor appointed pursuant to  
12      section 586 of title 28, United States Code” after “serving  
13      in the case”.

14      (c) AMENDMENTS TO SECTION 727 OF TITLE 11,  
15      U.S.C.—Section 727(d) of title 11, United States Code,  
16      is amended—

17           (1) by deleting “or” at the end of paragraph

18           (2);

19           (2) by substituting “; or” for the period at the  
20      end of paragraph (3); and

21           (3) by adding the following at the end the fol-  
22      lowing:

23           “(4) the debtor has failed to explain  
24      satisfactorily—

1           “(A) a material misstatement in an audit  
2           performed pursuant to section 586(f) of title  
3           28, United States Code; or

4           “(B) a failure to make available for inspec-  
5           tion all necessary accounts, papers, documents,  
6           financial records, files, and all other papers,  
7           things, or property belonging to the debtor that  
8           are requested for an audit conducted pursuant  
9           to section 586(f) of title 28, United States  
10          Code.”.

11       (d) EFFECTIVE DATE.—The amendments made by  
12       this section shall take effect 18 months after the date of  
13       enactment of this Act.

14       **SEC. 603. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7**  
15               **AND 13 CASES.**

16       (a) NOTICE.—Section 342 of title 11, United States  
17       Code, is amended—

18           (1) in subsection (c)—

19               (A) by striking “, but the failure of such  
20               notice to contain such information shall not in-  
21               validate the legal effect of such notice”; and

22               (B) by adding the following at the end:

23       “If the credit agreement between the debtor and the credi-  
24       tor or the last communication before the filing of the peti-  
25       tion in a voluntary case from the creditor to a debtor who

1 is an individual states an account number of the debtor  
2 which is the current account number of the debtor with  
3 respect to any debt held by the creditor against the debtor,  
4 the debtor shall include such account number in any notice  
5 to the creditor required to be given under this title. If the  
6 creditor has specified to the debtor an address at which  
7 the creditor wishes to receive correspondence regarding  
8 the debtor's account, any notice to the creditor required  
9 to be given by the debtor under this title shall be given  
10 at such address. For the purposes of this section, 'notice'  
11 shall include, but shall not be limited to, any correspond-  
12 ence from the debtor to the creditor after the commence-  
13 ment of the case, any statement of the debtor's intention  
14 under section 521(a)(2) of this title, notice of the com-  
15 mencement of any proceeding in the case to which the  
16 creditor is a party, and any notice of the hearing under  
17 section 1324 of this title.”;

18 (2) by adding at the end the following:

19 “(d) At any time, a creditor in a case of an individual  
20 debtor under chapter 7 or 13 may file with the court and  
21 serve on the debtor a notice of the address to be used to  
22 notify the creditor in that case. After 5 days following re-  
23 ceipt of such notice, any notice the court or the debtor  
24 is required to give the creditor shall be given at that ad-  
25 dress.



1       “(e) An entity may file with the court a notice stating  
2 its address for notice in cases under chapters 7 and 13.  
3 After 30 days following the filing of such notice, any notice  
4 in any case filed under chapter 7 or 13 given by the court  
5 shall be to that address unless specific notice is given  
6 under subsection (d) with respect to a particular case.

7       “(f) Notice given to a creditor other than as provided  
8 in this section shall not be effective notice until it has been  
9 brought to the attention of the creditor. If the creditor  
10 has designated a person or department to be responsible  
11 for receiving notices concerning bankruptcy cases and has  
12 established reasonable procedures so that bankruptcy no-  
13 tices received by the creditor will be delivered to such de-  
14 partment or person, notice will not be brought to the at-  
15 tention of the creditor until received by such person or  
16 department. No sanction under section 362(h) of this title  
17 or any other sanction which a court may impose on ac-  
18 count of violations of the stay under section 362(a) of this  
19 title or failure to comply with section 542 or 543 of this  
20 title may be imposed on any action of the creditor unless  
21 the action takes place after the creditor has received notice  
22 of the commencement of the case effective under this sec-  
23 tion.”.

1 (b) DEBTOR'S DUTIES.—Section 521 of title 11,  
2 United States Code, as amended by sections 604, 120, and  
3 302, is amended—

4 (1) by inserting “(a)” before “The debtor  
5 shall—”;

6 (2) by striking paragraph (1) and inserting the  
7 following:

8 “(1) file—

9 “(A) a list of creditors; and

10 “(B) unless the court orders otherwise—

11 “(i) a schedule of assets and liabil-  
12 ities;

13 “(ii) a schedule of current monthly in-  
14 come and current expenditures prepared in  
15 accordance with section 707(b)(2);

16 “(iii) a statement of the debtor’s fi-  
17 nancial affairs and, if applicable, a  
18 certificate—

19 “(I) of an attorney whose name  
20 is on the petition as the attorney for  
21 the debtor or any bankruptcy petition  
22 preparer signing the petition pursuant  
23 to section 110(b)(1) of this title indi-  
24 cating that such attorney or bank-  
25 ruptcy petition preparer delivered to

1 the debtor any notice required by sec-  
2 tion 342(b) of this title; or

3 “(II) if no attorney for the debt-  
4 or is indicated and no bankruptcy pe-  
5 tition preparer signed the petition, of  
6 the debtor that such notice was ob-  
7 tained and read by the debtor;

8 “(iv) copies of any Federal tax re-  
9 turns, including any schedules or attach-  
10 ments, filed by the debtor for the 3-year  
11 period preceding the order for relief;

12 “(v) copies of all payment advices or  
13 other evidence of payment, if any, received  
14 by the debtor from any employer of the  
15 debtor in the period 60 days prior to the  
16 filing of the petition; and

17 “(vi) a statement disclosing any rea-  
18 sonably anticipated increase in income or  
19 expenditures over the 12-month period fol-  
20 lowing the date of filing;”;

21 (3) by adding at the end the following:

22 “(e)(1) At any time, a creditor, in the case of an indi-  
23 vidual under chapter 7 or 13, may file with the court no-  
24 tice that the creditor requests the petition, schedules, and  
25 a statement of affairs filed by the debtor in the case and

1 the court shall make those documents available to the  
2 creditor who requests those documents at a reasonable  
3 cost within 5 business days after such request.

4 “(2) At any time, a creditor in a case under chapter  
5 13 may file with the court notice that the creditor requests  
6 the plan filed by the debtor in the case, and the court  
7 shall make such plan available to the creditor who requests  
8 such plan at a reasonable cost and not later than 5 days  
9 after such request.

10 “(f) An individual debtor in a case under chapter 7  
11 or 13 shall file with the court—

12 “(1) at the time filed with the taxing authority,  
13 all tax returns, including any schedules or attach-  
14 ments, with respect to the period from the com-  
15 mencement of the case until such time as the case  
16 is closed;

17 “(2) at the time filed with the taxing authority,  
18 all tax returns, including any schedules or attach-  
19 ments, that were not filed with the taxing authority  
20 when the schedules under subsection (a)(1) were  
21 filed with respect to the period that is 3 years before  
22 the order for relief;

23 “(3) any amendments to any of the tax returns,  
24 including schedules or attachments, described in  
25 paragraph (1) or (2); and

1           “(4) in a case under chapter 13, a statement  
2           subject to the penalties of perjury by the debtor of  
3           the debtor’s current monthly income and expendi-  
4           tures in the preceding tax year and current monthly  
5           income less expenditures for the month preceding  
6           the statement prepared in accordance with section  
7           707(b)(2) that shows how the amounts are  
8           calculated—

9           “(A) beginning on the date that is the  
10          later of 90 days after the close of the debtor’s  
11          tax year or 1 year after the order for relief, un-  
12          less a plan has been confirmed; and

13          “(B) thereafter, on or before the date that  
14          is 45 days before each anniversary of the con-  
15          firmation of the plan until the case is closed.

16          “(g)(1) A statement referred to in subsection (f)(4)  
17          shall disclose—

18          “(A) the amount and sources of income of the  
19          debtor;

20          “(B) the identity of any persons responsible  
21          with the debtor for the support of any dependents of  
22          the debtor; and

23          “(C) the identity of any persons who contrib-  
24          uted, and the amount contributed, to the household  
25          in which the debtor resides.

1       “(2) The tax returns, amendments, and statement of  
2 income and expenditures described in paragraph (1) shall  
3 be available to the United States trustee, any bankruptcy  
4 administrator, any trustee, and any party in interest for  
5 inspection and copying, subject to the requirements of  
6 subsection (h).

7       “(h)(1) Not later than 30 days after the date of en-  
8 actment of the Consumer Bankruptcy Reform Act of  
9 1999, the Director of the Administrative Office of the  
10 United States Courts shall establish procedures for safe-  
11 guarding the confidentiality of any tax information re-  
12 quired to be provided under this section.

13       “(2) The procedures under paragraph (1) shall in-  
14 clude reasonable restrictions on creditor access to tax in-  
15 formation that is required to be provided under this sec-  
16 tion to verify creditor identity and to restrict use of the  
17 information except with respect to the case.

18       “(3) Not later than 1 year after the date of enact-  
19 ment of the Consumer Bankruptcy Reform Act of 1999,  
20 the Director of the Administrative Office of the United  
21 States Courts shall prepare, and submit to Congress a re-  
22 port that—

23               “(A) assesses the effectiveness of the proce-  
24 dures under paragraph (1) to provide timely and

1 sufficient information to creditors concerning the  
2 case; and

3 “(B) if appropriate, includes proposed  
4 legislation—

5 “(i) to further protect the confidentiality of  
6 tax information or to make it better available to  
7 creditors; and

8 “(ii) to provide penalties for the improper  
9 use by any person of the tax information re-  
10 quired to be provided under this section.

11 “(i) If requested by the United States trustee or a  
12 trustee serving in the case, the debtor provide a document  
13 that establishes the identity of the debtor, including a  
14 driver’s license, passport, or other document that contains  
15 a photograph of the debtor and such other personal identi-  
16 fying information relating to the debtor that establishes  
17 the identity of the debtor.”.

18 (c) Section 1324 of title 11, United States Code, is  
19 amended—

20 (1) by inserting “(a)” before “After”; and

21 (2) by inserting at the end thereof—

22 “(c) Whenever a party in interest is given notice of  
23 a hearing on the confirmation or modification of a plan  
24 under this chapter, such notice shall include the informa-  
25 tion provided by the debtor on the most recent statement

1 filed with the court pursuant to section 521(a)(1)(B)(ii)  
2 or (f)(4) of this title.”.

3 **SEC. 604. DISMISSAL FOR FAILURE TO TIMELY FILE SCHED-**  
4 **ULES OR PROVIDE REQUIRED INFORMATION.**

5 Section 521 of title 11, United States Code, as  
6 amended by section 603 is amended by inserting after sub-  
7 section (a) the following:

8 “(b)(1) Notwithstanding section 707(a) of this title,  
9 and subject to paragraph (2), if an individual debtor in  
10 a voluntary case under chapter 7 or 13 fails to file all  
11 of the information required under subsection (a)(1) within  
12 45 days after the filing of the petition commencing the  
13 case, the case shall be automatically dismissed effective  
14 on the 46th day after the filing of the petition.

15 “(2) With respect to a case described in paragraph  
16 (1), any party in interest may request the court to enter  
17 an order dismissing the case. The court shall, if so re-  
18 quested, enter an order of dismissal not later than 5 days  
19 after such request.

20 “(3) Upon request of the debtor made within 45 days  
21 after the filing of the petition commencing a case de-  
22 scribed in paragraph (1), the court may allow the debtor  
23 an additional period not to exceed 45 days to file the infor-  
24 mation required under subsection (a)(1) if the court finds  
25 justification for extending the period for the filing.”.



1   **SEC. 605. ADEQUATE TIME TO PREPARE FOR HEARING ON**  
2                           **CONFIRMATION OF THE PLAN.**

3           (a) HEARING.—Section 1324 of title 11, United  
4 States Code, is amended—

5                   (1) by striking “After” and inserting the follow-  
6 ing:

7           “(a) Except as provided in subsection (b) and after”;  
8 and

9                   (2) by adding at the end the following:

10           “(b) The hearing on confirmation of the plan may  
11 be held not earlier than 20 days, and not later than 45  
12 days, after the meeting of creditors under section 341(a)  
13 of this title.”.

14   **SEC. 606. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION**  
15                           **IN CERTAIN CASES.**

16           Title 11, United States Code, is amended—

17                   (1) by amending section 1322(d) to read as fol-  
18 lows:

19           “(d) If the current monthly income of the debtor and  
20 the debtor’s spouse combined, when multiplied by 12, is  
21 not less than the highest national median family income  
22 last reported by the Bureau of the Census for a family  
23 of equal or lesser size or, in the case of a household of  
24 1 person, not less than the national median household in-  
25 come for 1 earner, the plan may not provide for payments  
26 over a period that is longer than 5 years. If the current

1 monthly income of the debtor and the debtor's spouse  
2 combined, when multiplied by 12, is less than the highest  
3 national median family income for a family of equal or  
4 lesser size, or in the case of a household of 1 person, the  
5 national median household income for 1 earner, the plan  
6 may not provide for payments over a period that is longer  
7 than 3 years, unless the court, for cause, approves a longer  
8 period, but the court may not approve a period that is  
9 longer than 5 years. Notwithstanding the foregoing, the  
10 national median family income for a family of more than  
11 4 individuals shall be the national median family income  
12 last reported by the Bureau of the Census for a family  
13 of 4 individuals plus \$583 for each additional member of  
14 the family.”;

15 (2) in section 1325(b)(1)(B) as amended by  
16 section 130—

17 (A) by striking “three year period” and in-  
18 serting “applicable commitment period”; and

19 (B) by inserting at the end of subpara-  
20 graph (B) the following: “The ‘applicable com-  
21 mitment period’ shall be not less than 5 years  
22 if the current monthly income of the debtor and  
23 the debtor’s spouse combined, when multiplied  
24 by 12, is not less than the highest national me-  
25 dian family income last reported by the Bureau

1 of the Census for a family of equal or lesser  
2 size, or in the case of a household of 1 person,  
3 the national median household income for 1  
4 earner. Notwithstanding the foregoing, the na-  
5 tional median family income for a family of  
6 more than 4 individuals shall be the national  
7 median family income last reported by the Bu-  
8 reau of the Census for a family of 4 individuals  
9 plus \$583 for each additional member of the  
10 family.”; and

11 (3) in section 1329—

12 (A) by striking in subsection (c) “three  
13 years” and inserting “the applicable commit-  
14 ment period under section 1325(b)(1)(B)”;

15 (B) by inserting at the end of subsection  
16 (c) the following:

17 “The duration period shall be 5 years if the current  
18 monthly income of the debtor and the debtor’s spouse  
19 combined, when multiplied by 12, is not less than the high-  
20 est national median family income last reported by the Bu-  
21 reau of the Census for a family of equal or lesser size or,  
22 in the case of a household of 1 person, the national median  
23 household income for 1 earner, as of the date of the modi-  
24 fication and shall be 3 years if the current monthly total  
25 income of the debtor and the debtor’s spouse combined,

1 when multiplied by 12, is less than the highest national  
2 median family income last reported by the Bureau of the  
3 Census for a family of equal or lesser size or, in the case  
4 of a household of 1 person, less than the national median  
5 household income for 1 earner as of the date of the modi-  
6 fication. Notwithstanding the foregoing, the national me-  
7 dian family income for a family of more than 4 individuals  
8 shall be the national median family income last reported  
9 by the Bureau of the Census for a family of 4 individuals  
10 plus \$583 for each additional member of the family.”.

11 **SEC. 607. SENSE OF THE CONGRESS REGARDING EXPAN-**  
12 **SION OF RULE 9011 OF THE FEDERAL RULES**  
13 **OF BANKRUPTCY PROCEDURE.**

14 It is the sense of the Congress that rule 9011 of the  
15 Federal Rules of Bankruptcy Procedure (11 U.S.C. App)  
16 should be modified to include a requirement that all docu-  
17 ments (including schedules), signed and unsigned, submit-  
18 ted to the court or to a trustee by debtors who represent  
19 themselves and debtors who are represented by an attor-  
20 ney be submitted only after the debtor or the debtor’s at-  
21 torney has made reasonable inquiry to verify that the in-  
22 formation contained in such documents is well grounded  
23 in fact, and is warranted by existing law or a good-faith  
24 argument for the extension, modification, or reversal of  
25 existing law.

1 **SEC. 608. ELIMINATION OF CERTAIN FEES PAYABLE IN**  
2 **CHAPTER 11 BANKRUPTCY CASES.**

3 (a) AMENDMENTS.—Section 1930(a)(6) of title 28,  
4 United States Code, is amended—

5 (1) in the 1st sentence by striking “until the  
6 case is converted or dismissed, whichever occurs  
7 first”; and

8 (2) in the 2d sentence—

9 (A) by striking “The” and inserting “Until  
10 the plan is confirmed or the case is converted  
11 (whichever occurs first) the”; and

12 (B) by striking “less than \$300,000;” and  
13 inserting “less than \$300,000. Until the case is  
14 converted, dismissed, or closed (whichever oc-  
15 curs first and without regard to confirmation of  
16 the plan) the fee shall be”.

17 (b) DELAYED EFFECTIVE DATE.—The amendments  
18 made by subsection (a) shall take effect on October 1,  
19 1999.

20 **SEC. 609. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**  
21 **TENDED TO DEPENDENT STUDENTS.**

22 Not later than 1 year after the date of the enactment  
23 of this Act, the Comptroller General of the United States  
24 shall—

25 (1) conduct a study regarding the impact that  
26 the extension of credit to individuals who are—

1 (A) claimed as dependents for purposes of  
2 the Internal Revenue Code of 1986; and

3 (B) enrolled in post-secondary educational  
4 institutions,

5 has on the rate of cases filed under title 11 of the  
6 United States Code; and

7 (2) submit to the Speaker of the House of Rep-  
8 resentatives and the President pro tempore of the  
9 Senate a report summarizing such study.

10 **SEC. 610. PROMPT RELIEF FROM STAY IN INDIVIDUAL**  
11 **CASES.**

12 Section 362(e) of title 11, United States Code, is  
13 amended—

14 (1) by inserting “(1)” after “(e)”; and

15 (2) by adding at the end the following:

16 “(2) Notwithstanding paragraph (1), in the case of  
17 an individual filing under chapter 7, 11, or 13, the stay  
18 under subsection (a) shall terminate on the date that is  
19 60 days after a request is made by a party in interest  
20 under subsection (d), unless—

21 “(A) a final decision is rendered by the court  
22 during the 60-day period beginning on the date of  
23 the request; or

24 “(B) that 60-day period is extended—

1                   “(i) by agreement of all parties in interest;  
2                   or  
3                   “(ii) by the court for such specific period  
4                   of time as the court finds is required by for  
5                   good cause as described in findings made by the  
6                   court.”.

7   **SEC. 611. STOPPING ABUSIVE CONVERSIONS FROM CHAP-**  
8                   **TER 13.**

9           Section 348(f)(1) of title 11, United States Code, is  
10 amended—

11           (1) in subparagraph (A), by striking “and” at  
12           the end;

13           (2) in subparagraph (B)—

14                   (A) by striking “in the converted case,  
15                   with allowed secured claims” and inserting  
16                   “only in a case converted to chapter 11 or 12  
17                   but not in a case converted to chapter 7, with  
18                   allowed secured claims in cases under chapters  
19                   11 and 12”; and

20                   (B) by striking the period and inserting “;  
21                   and”; and

22           (3) by adding at the end the following:

23                   “(C) with respect to cases converted from chap-  
24           ter 13—

1           “(i) the claim of any creditor holding secu-  
2           rity as of the date of the petition shall continue  
3           to be secured by that security unless the full  
4           amount of such claim determined under appli-  
5           cable nonbankruptcy law has been paid in full  
6           as of the date of conversion, notwithstanding  
7           any valuation or determination of the amount  
8           of an allowed secured claim made for the pur-  
9           poses of the chapter 13 proceeding; and

10           “(ii) unless a prebankruptcy default has  
11           been fully cured pursuant to the plan at the  
12           time of conversion, in any proceeding under this  
13           title or otherwise, the default shall have the ef-  
14           fect given under applicable nonbankruptcy  
15           law.”.

16 **SEC. 612. BANKRUPTCY APPEALS.**

17           Title 28 of the United States Code is amended by  
18           inserting after section 1292 the following:

19 **“§ 1293. Bankruptcy appeals**

20           “(a) The courts of appeals (other than the United  
21           States Court of Appeals for the Federal Circuit) shall have  
22           jurisdiction of appeals from the following:

23           “(1) Final orders and judgments entered by  
24           bankruptcy courts and district courts in cases under  
25           title 11, in proceedings arising under title 11, and



1 in proceedings arising in or related to a case under  
2 title 11, including final orders in proceedings regard-  
3 ing the automatic stay of section 362 of title 11.

4 “(2) Interlocutory orders entered by bankruptcy  
5 courts and district courts granting, continuing,  
6 modifying, refusing or dissolving injunctions, or re-  
7 fusing to dissolve or modify injunctions in cases  
8 under title 11, in proceedings arising under title 11,  
9 and in proceedings arising in or related to a case  
10 under title 11, other than interlocutory orders in  
11 proceedings regarding the automatic stay of section  
12 362 of title 11.

13 “(3) Interlocutory orders of bankruptcy courts  
14 and district courts entered under section 1104(a) or  
15 1121(d) of title 11, or the refusal to enter an order  
16 under such section.

17 “(4) An interlocutory order of a bankruptcy  
18 court or district court entered in a case under title  
19 11, in a proceeding arising under title 11, or in a  
20 proceeding arising in or related to a case under title  
21 11, if the court of appeals that would have jurisdic-  
22 tion of an appeal of a final order entered in such  
23 case or such proceeding permits, in its discretion,  
24 appeal to be taken from such interlocutory order.

1       “(b) Final decisions, judgments, orders, and decrees  
2 entered by a bankruptcy appellate panel under subsection  
3 (b) of this section.

4       “(c)(1) The judicial council of a circuit may establish  
5 a bankruptcy appellate panel composed of bankruptcy  
6 judges in the circuit who are appointed by the judicial  
7 council, which panel shall exercise the jurisdiction to re-  
8 view orders and judgments of bankruptcy courts described  
9 in paragraphs (1)–(4) of subsection (a) of this section  
10 unless—

11           “(A) the appellant elects at the time of filing  
12 the appeal; or

13           “(B) any other party elects, not later than 10  
14 days after service of the notice of the appeal;  
15 to have such jurisdiction exercised by the court of appeals.

16       “(2) An appeal to be heard by a bankruptcy appellate  
17 panel under this subsection (b) shall be heard by 3 mem-  
18 bers of the bankruptcy appellate panel, provided that a  
19 member of such panel may not hear an appeal originating  
20 in the district for which such member is appointed or des-  
21 ignated under section 152 of this title.

22       “(3) If authorized by the Judicial Conference of the  
23 United States, the judicial councils of 2 or more circuits  
24 may establish a joint bankruptcy appellate panel.”.

1   **SEC. 613. GAO STUDY.**

2           (a) STUDY.—Not later than 270 days after the date  
3 of the enactment of this Act, the Comptroller General of  
4 the United States shall conduct a study of the feasibility,  
5 effectiveness, and cost of requiring trustees appointed  
6 under title 11 of the United States Code, or the bank-  
7 ruptcy courts, to provide to the Office of Child Support  
8 Enforcement promptly after the commencement of cases  
9 by individual debtors under such title, the names and so-  
10 cial security numbers of such debtors for the purposes of  
11 allowing such Office to determine whether such debtors  
12 have outstanding obligations for child support (as deter-  
13 mined on the basis of information in the Federal Case  
14 Registry or other national database).

15           (b) REPORT.—Not later than 300 days after the date  
16 of the enactment of this Act, the Comptroller General shall  
17 submit to the Speaker of the House of Representatives  
18 and the President pro tempore of the Senate, a report con-  
19 taining the results of the study required by subsection (a).

20   **TITLE VII—BANKRUPTCY DATA**

21   **SEC. 701. IMPROVED BANKRUPTCY STATISTICS.**

22           (a) AMENDMENT.—Chapter 6 of part I of title 28,  
23 United States Code, is amended by adding at the end the  
24 following:

1   **“§ 159. Bankruptcy statistics**

2           “(a) The clerk of each district shall compile statistics  
3 regarding individual debtors with primarily consumer  
4 debts seeking relief under chapters 7, 11, and 13 of title  
5 11. Those statistics shall be in a form prescribed by the  
6 Director of the Administrative Office of the United States  
7 Courts (referred to in this section as the ‘Office’).

8           “(b) The Director shall—

9               “(1) compile the statistics referred to in sub-  
10 section (a);

11               “(2) make the statistics available to the public;  
12 and

13               “(3) not later than October 31, 2000, and an-  
14 nually thereafter, prepare, and submit to Congress a  
15 report concerning the information collected under  
16 subsection (a) that contains an analysis of the infor-  
17 mation.

18           “(c) The compilation required under subsection (b)  
19 shall—

20               “(1) be itemized, by chapter, with respect to  
21 title 11;

22               “(2) be presented in the aggregate and for each  
23 district; and

24               “(3) include information concerning—

25                       “(A) the total assets and total liabilities of  
26 the debtors described in subsection (a), and in

1 each category of assets and liabilities, as re-  
2 ported in the schedules prescribed pursuant to  
3 section 2075 of this title and filed by those  
4 debtors;

5 “(B) the current monthly income, and av-  
6 erage income and average expenses of those  
7 debtors as reported on the schedules and state-  
8 ments that each such debtor files under sections  
9 521 and 1322 of title 11;

10 “(C) the aggregate amount of debt dis-  
11 charged in the reporting period, determined as  
12 the difference between the total amount of debt  
13 and obligations of a debtor reported on the  
14 schedules and the amount of such debt reported  
15 in categories which are predominantly non-  
16 dischargeable;

17 “(D) the average period of time between  
18 the filing of the petition and the closing of the  
19 case;

20 “(E) for the reporting period—

21 “(i) the number of cases in which a  
22 reaffirmation was filed; and

23 “(ii)(I) the total number of reaffirma-  
24 tions filed;

1           “(II) of those cases in which a reaffir-  
2           mation was filed, the number in which the  
3           debtor was not represented by an attorney;  
4           and

5           “(III) of those cases, the number of  
6           cases in which the reaffirmation was ap-  
7           proved by the court;

8           “(F) with respect to cases filed under  
9           chapter 13 of title 11, for the reporting  
10          period—

11          “(i)(I) the number of cases in which a  
12          final order was entered determining the  
13          value of property securing a claim in an  
14          amount less than the amount of the claim;  
15          and

16          “(II) the number of final orders deter-  
17          mining the value of property securing a  
18          claim issued;

19          “(ii) the number of cases dismissed,  
20          the number of cases dismissed for failure  
21          to make payments under the plan, the  
22          number of cases refiled after dismissal,  
23          and the number of cases in which the plan  
24          was completed, separately itemized with re-

1                   spect to the number of modifications made  
2                   before completion of the plan, if any; and  
3                   “(iii) the number of cases in which  
4                   the debtor filed another case within the 6  
5                   years previous to the filing;

6                   “(G) the number of cases in which credi-  
7                   tors were fined for misconduct and any amount  
8                   of punitive damages awarded by the court for  
9                   creditor misconduct; and

10                   “(H) the number of cases in which sanc-  
11                   tions under rule 9011 of the Federal Rules of  
12                   Bankruptcy Procedure were imposed against  
13                   debtor’s counsel and damages awarded under  
14                   such Rule.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 6 of title 28, United States Code, is amended by adding at the end the following:

“159. Bankruptcy statistics.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

21 SEC. 702. UNIFORM RULES FOR THE COLLECTION OF BANK-  
22 RUPTCY DATA.

23 (a) AMENDMENT.—Title 28 of the United States  
24 Code is amended by inserting after section 589a the fol-  
25 lowing:

1   **“§ 589b. Bankruptcy data**

2           “(a) RULES.—The Attorney General shall, within a  
3 reasonable time after the effective date of this section,  
4 issue rules requiring uniform forms for (and from time  
5 to time thereafter to appropriately modify and approve)—

6           “(1) final reports by trustees in cases under  
7 chapters 7, 12, and 13 of title 11; and

8           “(2) periodic reports by debtors in possession or  
9 trustees, as the case may be, in cases under chapter  
10 11 of title 11.

11          “(b) REPORTS.—All reports referred to in subsection  
12 (a) shall be designed (and the requirements as to place  
13 and manner of filing shall be established) so as to facili-  
14 tate compilation of data and maximum possible access of  
15 the public, both by physical inspection at 1 or more central  
16 filing locations, and by electronic access through the Inter-  
17 net or other appropriate media.

18          “(c) REQUIRED INFORMATION.—The information re-  
19 quired to be filed in the reports referred to in subsection  
20 (b) shall be that which is in the best interests of debtors  
21 and creditors, and in the public interest in reasonable and  
22 adequate information to evaluate the efficiency and practi-  
23 cality of the Federal bankruptcy system. In issuing rules  
24 proposing the forms referred to in subsection (a), the At-  
25 torney General shall strike the best achievable practical  
26 balance between—



1           “(1) the reasonable needs of the public for in-  
2           formation about the operational results of the Fed-  
3           eral bankruptcy system; and

4           “(2) economy, simplicity, and lack of undue  
5           burden on persons with a duty to file reports.

6           “(d) FINAL REPORTS.—Final reports proposed for  
7           adoption by trustees under chapters 7, 12, and 13 of title  
8           11 shall, in addition to such other matters as are required  
9           by law or as the Attorney General in the discretion of the  
10          Attorney General, shall propose, include with respect to  
11          a case under such title—

12           “(1) information about the length of time the  
13          case was pending;

14           “(2) assets abandoned;

15           “(3) assets exempted;

16           “(4) receipts and disbursements of the estate;

17           “(5) expenses of administration;

18           “(6) claims asserted;

19           “(7) claims allowed; and

20           “(8) distributions to claimants and claims dis-  
21          charged without payment,

22          in each case by appropriate category and, in cases under  
23          chapters 12 and 13 of title 11, date of confirmation of  
24          the plan, each modification thereto, and defaults by the  
25          debtor in performance under the plan.

1       “(e) PERIODIC REPORTS.—Periodic reports proposed  
2 for adoption by trustees or debtors in possession under  
3 chapter 11 of title 11 shall, in addition to such other mat-  
4 ters as are required by law or as the Attorney General,  
5 in the discretion of the Attorney General, shall propose,  
6 include—

7           “(1) information about the standard industry  
8 classification, published by the Department of Com-  
9 merce, for the businesses conducted by the debtor;

10          “(2) length of time the case has been pending;

11          “(3) number of full-time employees as at the  
12 date of the order for relief and at end of each re-  
13 porting period since the case was filed;

14          “(4) cash receipts, cash disbursements and  
15 profitability of the debtor for the most recent period  
16 and cumulatively since the date of the order for re-  
17 lief;

18          “(5) compliance with title 11, whether or not  
19 tax returns and tax payments since the date of the  
20 order for relief have been timely filed and made;

21          “(6) all professional fees approved by the court  
22 in the case for the most recent period and cumula-  
23 tively since the date of the order for relief (sepa-  
24 rately reported, in for the professional fees incurred  
25 by or on behalf of the debtor, between those that

1 would have been incurred absent a bankruptcy case  
2 and those not); and

3 “(7) plans of reorganization filed and confirmed  
4 and, with respect thereto, by class, the recoveries of  
5 the holders, expressed in aggregate dollar values  
6 and, in the case of claims, as a percentage of total  
7 claims of the class allowed.”.

8 (b) TECHNICAL AMENDMENT.—The table of sections  
9 of chapter 39 of title 28, United States Code, is amended  
10 by adding at the end the following:

“589b. Bankruptcy data.”.

11 **SEC. 703. SENSE OF THE CONGRESS REGARDING AVAIL-**  
12 **ABILITY OF BANKRUPTCY DATA.**

13 It is the sense of the Congress that—

14 (1) the national policy of the United States  
15 should be that all data held by bankruptcy clerks in  
16 electronic form, to the extent such data reflects only  
17 public records (as defined in section 107 of title 11  
18 of the United States Code), should be released in a  
19 usable electronic form in bulk to the public subject  
20 to such appropriate privacy concerns and safeguards  
21 as the Judicial Conference of the United States may  
22 determine; and

23 (2) there should be established a bankruptcy  
24 data system in which—

- 1 (A) a single set of data definitions and  
2 forms are used to collect data nationwide; and  
3 (B) data for any particular bankruptcy  
4 case are aggregated in the same electronic  
5 record.

6 **TITLE VIII—BANKRUPTCY TAX**  
7 **PROVISIONS**

8 **SEC. 801. TREATMENT OF CERTAIN LIENS.**

9 (a) TREATMENT OF CERTAIN LIENS.—Section 724  
10 of title 11, United States Code, is amended—

11 (1) in subsection (b), in the matter preceding  
12 paragraph (1), by inserting “(other than to the ex-  
13 tent that there is a properly perfected unavoidable  
14 tax lien arising in connection with an ad valorem tax  
15 on real or personal property of the estate)” after  
16 “under this title”;

17 (2) in subsection (b)(2), after “507(a)(1)”, in-  
18 sert “(except that such expenses, other than claims  
19 for wages, salaries, or commissions which arise after  
20 the filing of a petition, shall be limited to expenses  
21 incurred under chapter 7 of this title and shall not  
22 include expenses incurred under chapter 11 of this  
23 title)”;

24 (3) by adding at the end the following:

1       “(e) Before subordinating a tax lien on real or per-  
2       sonal property of the estate, the trustee shall—

3               “(1) exhaust the unencumbered assets of the  
4       estate; and

5               “(2) in a manner consistent with section 506(c)  
6       of this title, recover from property securing an al-  
7       lowed secured claim the reasonable, necessary costs  
8       and expenses of preserving or disposing of that prop-  
9       erty.

10       “(f) Notwithstanding the exclusion of ad valorem tax  
11       liens set forth in this section and subject to the require-  
12       ments of subsection (e)—

13               “(1) claims for wages, salaries, and commis-  
14       sions that are entitled to priority under section  
15       507(a)(3) of this title; or

16               “(2) claims for contributions to an employee  
17       benefit plan entitled to priority under section  
18       507(a)(4) of this title,

19       may be paid from property of the estate which secures  
20       a tax lien, or the proceeds of such property.”.

21       (b) DETERMINATION OF TAX LIABILITY.—Section  
22       505(a)(2) of title 11, United States Code, is amended—

23               (1) in subparagraph (A), by striking “or” at  
24       the end;

1           (2) in subparagraph (B), by striking the period  
2           at the end and inserting “; or”; and

3           (3) by adding at the end the following:

4           “(C) the amount or legality of any amount arising  
5           in connection with an ad valorem tax on real or  
6           personal property of the estate, if the applicable period  
7           for contesting or redetermining that amount  
8           under any law (other than a bankruptcy law) has  
9           expired.”.

10 **SEC. 802. EFFECTIVE NOTICE TO GOVERNMENT.**

11       (a) EFFECTIVE NOTICE TO GOVERNMENTAL  
12 UNITS.—Section 342 of title 11, United States Code, as  
13 amended by section 603, is amended by adding at the end  
14 the following:

15       “(g) If a debtor lists a governmental unit as a creditor  
16 in a list or schedule, any notice required to be given  
17 by the debtor under this title, any rule, any applicable law,  
18 or any order of the court, shall identify the department,  
19 agency, or instrumentality through which the debtor is indebted.  
20 The debtor shall identify (with information such  
21 as a taxpayer identification number, loan, account or contract  
22 number, or real estate parcel number, where applicable),  
23 and describe the underlying basis for the governmental unit’s  
24 claim. If the debtor’s liability to a governmental unit arises  
25 from a debt or obligation owed or in-

1 curred by another individual, entity, or organization, or  
2 under a different name, the debtor shall identify such indi-  
3 vidual, entity, organization, or name.

4 “(h) The clerk shall keep and update quarterly, in  
5 the form and manner as the Director of the Administra-  
6 tive Office of the United States Courts prescribes, and  
7 make available to debtors, a register in which a govern-  
8 mental unit may designate a safe harbor mailing address  
9 for service of notice in cases pending in the district. A  
10 governmental unit may file a statement with the clerk des-  
11 ignating a safe harbor address to which notices are to be  
12 sent, unless such governmental unit files a notice of  
13 change of address.”.

14 (b) ADOPTION OF RULES PROVIDING NOTICE.—The  
15 Advisory Committee on Bankruptcy Rules of the Judicial  
16 Conference shall, within a reasonable period of time after  
17 the date of the enactment of this Act, propose for adoption  
18 enhanced rules for providing notice to State, Federal, and  
19 local government units that have regulatory authority over  
20 the debtor or which may be creditors in the debtor’s case.  
21 Such rules shall be reasonably calculated to ensure that  
22 notice will reach the representatives of the governmental  
23 unit, or subdivision thereof, who will be the proper persons  
24 authorized to act upon the notice. At a minimum, the rules  
25 should require that the debtor—

1           (1) identify in the schedules and the notice, the  
2           subdivision, agency, or entity in respect of which  
3           such notice should be received;

4           (2) provide sufficient information (such as case  
5           captions, permit numbers, taxpayer identification  
6           numbers, or similar identifying information) to per-  
7           mit the governmental unit or subdivision thereof, en-  
8           titled to receive such notice, to identify the debtor or  
9           the person or entity on behalf of which the debtor  
10          is providing notice where the debtor may be a suc-  
11          cessor in interest or may not be the same as the per-  
12          son or entity which incurred the debt or obligation;  
13          and

14          (3) identify, in appropriate schedules, served to-  
15          gether with the notice, the property in respect of  
16          which the claim or regulatory obligation may have  
17          arisen, if any, the nature of such claim or regulatory  
18          obligation and the purpose for which notice is being  
19          given.

20          (c) EFFECT OF FAILURE OF NOTICE.—Section 342  
21          of title 11, United States Code, as amended by section  
22          603 and subsection (a), is amended by adding at the end  
23          the following:

24          “(i) A notice that does not comply with subsections  
25          (d) and (e) shall not be effective unless the debtor dem-



1 onstrates, by clear and convincing evidence, that timely  
2 notice was given in a manner reasonably calculated to sat-  
3 isfy the requirements of this section was given, and that—

4 “(1) either the notice was timely sent to the  
5 safe harbor address provided in the register main-  
6 tained by the clerk of the district in which the case  
7 was pending for such purposes; or

8 “(2) no safe harbor address was provided in  
9 such list for the governmental unit and that an offi-  
10 cer of the governmental unit who is responsible for  
11 the matter or claim had actual knowledge of the case  
12 in sufficient time to act.”.

13 **SEC. 803. NOTICE OF REQUEST FOR A DETERMINATION OF**  
14 **TAXES.**

15 Section 505(b) of title 11, United States Code, is  
16 amended by striking “Unless” at the beginning of the sec-  
17 ond sentence thereof and inserting “If the request is made  
18 substantially in the manner designated by the govern-  
19 mental unit and unless”.

20 **SEC. 804. RATE OF INTEREST ON TAX CLAIMS.**

21 (a) AMENDMENT.—Chapter 5 of title 11, United  
22 States Code, is amended by adding at the end the follow-  
23 ing:

1   **“§ 511. Rate of interest on tax claims**

2           “If any provision of this title requires the payment  
3 of interest on a tax claim or requires the payment of inter-  
4 est to enable a creditor to receive the present value of the  
5 allowed amount of a tax claim, the rate of interest shall  
6 be as follows:

7           “(1) In the case of ad valorem tax claims,  
8 whether secured or unsecured, other unsecured tax  
9 claims where interest is required to be paid under  
10 section 726(a)(5) of this title, secured tax claims,  
11 and administrative tax claims paid under section  
12 503(b)(1) of this title, the rate shall be determined  
13 under applicable nonbankruptcy law.

14           “(2) In the case of all other tax claims, the  
15 minimum rate of interest shall be the Federal short-  
16 term rate rounded to the nearest full percent, deter-  
17 mined under section 1274(d) of the Internal Reve-  
18 nue Code of 1986, plus 3 percentage points.

19           “(A) In the case of claims for Federal in-  
20 come taxes, such rate shall be subject to any  
21 adjustment that may be required under section  
22 6621(d) of the Internal Revenue Code of 1986.

23           “(B) In the case of taxes paid under a con-  
24 firmed plan or reorganization, such rate shall  
25 be determined as of the calendar month in  
26 which the plan is confirmed.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-  
2 tions of chapter 5 of title 11, United States Code, is  
3 amended by inserting after the item relating to section  
4 510 the following:

“511. Rate of interest on tax claims.”.

5 **SEC. 805. TOLLING OF PRIORITY OF TAX CLAIM TIME PERI-**  
6 **ODS.**

7 Section 507(a)(8)(A) of title 11, United States Code,  
8 as so redesignated, is amended—

9 (1) in clause (i) by inserting after “petition”  
10 and before the semicolon “, plus any time, plus 6  
11 months, during which the stay of proceedings was in  
12 effect in a prior case under this title”; and

13 (2) amend clause (ii) to read as follows:

14 “(ii) assessed within 240 days before  
15 the date of the filing of the petition, exclu-  
16 sive of—

17 “(I) any time plus 30 days dur-  
18 ing which an offer in compromise with  
19 respect of such tax, was pending or in  
20 effect during such 240-day period;

21 “(II) any time plus 30 days dur-  
22 ing which an installment agreement  
23 with respect of such tax was pending

1 or in effect during such 240-day pe-  
2 riod, up to 1 year; and

3 “(III) any time plus 6 months  
4 during which a stay of proceedings  
5 against collections was in effect in a  
6 prior case under this title during such  
7 240-day period.”.

8 **SEC. 806. PRIORITY PROPERTY TAXES INCURRED.**

9 Section 507(a)(8)(B) of title 11, United States Code,  
10 is amended by striking “assessed” and inserting “in-  
11 curred”.

12 **SEC. 807. CHAPTER 13 DISCHARGE OF FRAUDULENT AND**  
13 **OTHER TAXES.**

14 Section 1328(a)(2) of title 11, United States Code,  
15 is amended by inserting “(1),” after “paragraph”.

16 **SEC. 808. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.**

17 Section 1141(d) of title 11, United States Code, is  
18 amended by adding at the end the following:

19 “(6) Notwithstanding the provisions of paragraph  
20 (1), the confirmation of a plan does not discharge a debtor  
21 which is a corporation from any debt for a tax or customs  
22 duty with respect to which the debtor made a fraudulent  
23 return or willfully attempted in any manner to evade or  
24 defeat such tax.”.

1   **SEC. 809. STAY OF TAX PROCEEDINGS.**

2           (a) SECTION 362 STAY LIMITED TO PREPETITION  
3 TAXES.—Section 362(a)(8) of title 11, United States  
4 Code, is amended by striking the period at the end and  
5 inserting “, in respect of a tax liability for a taxable period  
6 ending before the order for relief.”.

7           (b) APPEAL OF TAX COURT DECISIONS PER-  
8 MITTED.—Section 362(b)(9) of title 11, United States  
9 Code, is amended—

10               (1) in subparagraph (C) by striking “or” at the  
11           end;

12               (2) in subparagraph (D) by striking the period  
13           at the end and inserting “; or”; and

14               (3) by adding at the end the following:

15                       “(E) the appeal of a decision by a court or  
16                       administrative tribunal which determines a tax  
17                       liability of the debtor without regard to whether  
18                       such determination was made prepetition or  
19                       postpetition.”.

20   **SEC. 810. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**  
21                       **CASES.**

22           Section 1129(a)(9) of title 11, United States Code,  
23 is amended—

24               (1) in subparagraph (B) by striking “and” at  
25           the end; and

26               (2) in subparagraph (C)—

1 (A) by striking “deferred cash payments,  
2 over a period not exceeding six years after the  
3 date of assessment of such claim,” and insert-  
4 ing “regular installment payments in cash, but  
5 in no case with a balloon provision, and no  
6 more than three months apart, beginning no  
7 later than the effective date of the plan and  
8 ending on the earlier of five years after the pe-  
9 tition date or the last date payments are to be  
10 made under the plan to unsecured creditors,”;

11 (B) by striking the period at the end and  
12 inserting “; and”; and

13 (3) by adding at the end the following:

14 “(D) with respect to a secured claim which  
15 would be described in section 507(a)(8) of this  
16 title but for its secured status, the holder of  
17 such claim will receive on account of such claim  
18 cash payments of not less than is required in  
19 subparagraph (C) and over a period no greater  
20 than is required in such subparagraph.”.

21 **SEC. 811. AVOIDANCE OF STATUTORY TAX LIENS PROHIB-**  
22 **ITED.**

23 Section 545(2) of title 11, United States Code, is  
24 amended by striking the semicolon at the end and insert-  
25 ing “, except where such purchaser is a purchaser de-

1 scribed in section 6323 of the Internal Revenue Code of  
2 1986 or similar provision of State or local law;”.

3 **SEC. 812. PAYMENT OF TAXES IN THE CONDUCT OF BUSI-**  
4 **NESS.**

5 (a) PAYMENT OF TAXES REQUIRED.—Section 960 of  
6 title 28, United States Code, is amended—

7 (1) by inserting “(a)” before “Any”; and

8 (2) by adding at the end the following:

9 “(b) Such taxes shall be paid when due in the conduct  
10 of such business unless—

11 “(1) the tax is a property tax secured by a lien  
12 against property that is abandoned within a reason-  
13 able time after the lien attaches, by the trustee of  
14 a bankruptcy estate, pursuant to section 554 of title  
15 11; or

16 “(2) payment of the tax is excused under a spe-  
17 cific provision of title 11.

18 “(c) In a case pending under chapter 7 of title 11,  
19 payment of a tax may be deferred until final distribution  
20 is made under section 726 of title 11 if—

21 “(1) the tax was not incurred by a trustee duly  
22 appointed under chapter 7 of title 11; or

23 “(2) before the due date of the tax, the court  
24 has made a finding of probable insufficiency of  
25 funds of the estate to pay in full the administrative

1 expenses allowed under section 503(b) of title 11  
2 that have the same priority in distribution under  
3 section 726(b) of title 11 as such tax.”.

4 (b) PAYMENT OF AD VALOREM TAXES REQUIRED.—  
5 Section 503(b)(1)(B) of title 11, United States Code, is  
6 amended in clause (i) by inserting after “estate,” and be-  
7 fore “except” the following: “whether secured or unse-  
8 cured, including property taxes for which liability is in rem  
9 only, in personam or both,”.

10 (c) REQUEST FOR PAYMENT OF ADMINISTRATIVE  
11 EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of  
12 title 11, United States Code, is amended by adding at the  
13 end the following:

14 “(D) notwithstanding the requirements of sub-  
15 section (a) of this section, a governmental unit shall  
16 not be required to file a request for the payment of  
17 a claim described in subparagraph (B) or (C);”.

18 (d) PAYMENT OF TAXES AND FEES AS SECURED  
19 CLAIMS.—Section 506 of title 11, United States Code, is  
20 amended—

21 (1) in subsection (b) by inserting “or State  
22 statute” after “agreement”; and

23 (2) in subsection (c) by inserting “, including  
24 the payment of all ad valorem property taxes in re-  
25 spect of the property” before the period at the end.



1   **SEC. 813. TARDILY FILED PRIORITY TAX CLAIMS.**

2           Section 726(a)(1) of title 11, United States Code, is  
3 amended by striking “before the date on which the trustee  
4 commences distribution under this section” and inserting  
5 “on or before the earlier of 10 days after the mailing to  
6 creditors of the summary of the trustee’s final report or  
7 the date on which the trustee commences final distribution  
8 under this section”.

9   **SEC. 814. INCOME TAX RETURNS PREPARED BY TAX AU-**  
10                   **THORITIES.**

11           Section 523(a)(1)(B) of title 11, United States Code,  
12 is amended—

13           (1) by inserting “or equivalent report or no-  
14 tice,” after “a return,”;

15           (2) in clause (i)—

16                   (A) by inserting “or given” after “filed”;  
17 and

18                   (B) by striking “or” at the end;

19           (3) in clause (ii)—

20                   (A) by inserting “or given” after “filed”;  
21 and

22                   (B) by inserting “, report, or notice” after  
23 “return”; and

24           (4) by adding at the end the following:

25                           “(iii) for purposes of this subsection,  
26 a return—

1                   “(I) must satisfy the require-  
2                   ments of applicable nonbankruptcy  
3                   law, and includes a return prepared  
4                   pursuant to section 6020(a) of the In-  
5                   ternal Revenue Code of 1986, or simi-  
6                   lar State or local law, or a written  
7                   stipulation to a judgment entered by a  
8                   nonbankruptcy tribunal, but does not  
9                   include a return made pursuant to  
10                  section 6020(b) of the Internal Reve-  
11                  nue Code of 1986, or similar State or  
12                  local law; and

13                   “(II) must have been filed in a  
14                   manner permitted by applicable non-  
15                   bankruptcy law; or”.

16 **SEC. 815. DISCHARGE OF THE ESTATE’S LIABILITY FOR UN-**  
17 **PAID TAXES.**

18                  Section 505(b) of title 11, United States Code, is  
19                  amended in the second sentence by inserting “the estate,”  
20                  after “misrepresentation,”.

21 **SEC. 816. REQUIREMENT TO FILE TAX RETURNS TO CON-**  
22 **FIRM CHAPTER 13 PLANS.**

23                  (a) FILING OF PREPETITION TAX RETURNS RE-  
24                  QUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of

1 title 11, United States Code, as amended by section 140,  
2 is amended—

3 (1) in paragraph (6) by striking “and” at the  
4 end;

5 (2) in paragraph (7) by striking the period at  
6 the end and inserting “; and”; and

7 (3) by adding at the end the following:

8 “(8) if the debtor has filed all Federal, State,  
9 and local tax returns as required by section 1308 of  
10 this title.”.

11 (b) ADDITIONAL TIME PERMITTED FOR FILING TAX  
12 RETURNS.—(1) Chapter 13 of title 11, United States  
13 Code, as amended by section 135, is amended by adding  
14 at the end the following:

15 **“§ 1308. Filing of prepetition tax returns**

16 “(a) On or before the day prior to the day on which  
17 the first meeting of the creditors is convened under section  
18 341(a) of this title, the debtor shall have filed with appro-  
19 priate tax authorities all tax returns for all taxable periods  
20 ending in the 3-year period ending on the date of filing  
21 of the petition.

22 “(b) If the tax returns required by subsection (a)  
23 have not been filed by the date on which the first meeting  
24 of creditors is convened under section 341(a) of this title,  
25 the trustee may continue such meeting for a reasonable

1 period of time, to allow the debtor additional time to file  
2 any unfiled returns, but such additional time shall be no  
3 more than—

4 “(1) for returns that are past due as of the  
5 date of the filing of the petition, 120 days from such  
6 date;

7 “(2) for returns which are not past due as of  
8 the date of the filing of the petition, the later of 120  
9 days from such date or the due date for such re-  
10 turns under the last automatic extension of time for  
11 filing such returns to which the debtor is entitled,  
12 and for which request has been timely made, accord-  
13 ing to applicable nonbankruptcy law; and

14 “(3) upon notice and hearing, and order en-  
15 tered before the lapse of any deadline fixed accord-  
16 ing to this subsection, where the debtor dem-  
17 onstrates, by clear and convincing evidence, that the  
18 failure to file the returns as required is because of  
19 circumstances beyond the control of the debtor, the  
20 court may extend the deadlines set by the trustee as  
21 provided in this subsection for—

22 “(A) a period of no more than 30 days for  
23 returns described in paragraph (1) of this sub-  
24 section; and

1                   “(B) for no more than the period of time  
2                   ending on the applicable extended due date for  
3                   the returns described in paragraph (2).

4           “(c) For purposes of this section only, a return in-  
5 cludes a return prepared pursuant to section 6020 (a) or  
6 (b) of the Internal Revenue Code of 1986 or similar State  
7 or local law, or a written stipulation to a judgment entered  
8 by a nonbankruptcy tribunal.”.

9           (2) The table of sections of chapter 13 of title 11,  
10 United States Code, is amended by inserting after the  
11 item relating to section 1307 the following:

          “1308. Filing of prepetition tax returns.”.

12           (c) DISMISSAL OR CONVERSION ON FAILURE TO  
13 COMPLY.—Section 1307 of title 11, United States Code,  
14 is amended—

15                   (1) by redesignating subsections (e) and (f) as  
16                   subsections (f) and (g), respectively; and

17                   (2) by inserting after subsection (d) the follow-  
18                   ing:

19           “(e) Upon the failure of the debtor to file tax returns  
20 under section 1308 of this title, on request of a party in  
21 interest or the United States trustee and after notice and  
22 a hearing, the court shall dismiss a case or convert a case  
23 under this chapter to a case under chapter 7 of this title,  
24 whichever is in the best interests of creditors and the es-  
25 tate.”.

1       (d) TIMELY FILED CLAIMS.—Section 502(b)(9) of  
2 title 11, United States Code, is amended by striking the  
3 period at the end and inserting “, and except that in a  
4 case under chapter 13 of this title, a claim of a govern-  
5 mental unit for a tax in respect of a return filed under  
6 section 1308 of this title shall be timely if it is filed on  
7 or before 60 days after such return or returns were filed  
8 as required.”.

9       (e) RULES FOR OBJECTIONS TO CLAIMS AND TO  
10 CONFIRMATION.—It is the sense of the Congress that the  
11 Advisory Committee on Bankruptcy Rules of the Judicial  
12 Conference should, within a reasonable period of time  
13 after the date of the enactment of this Act, propose for  
14 adoption amended Federal Rules of Bankruptcy Proce-  
15 dure which provide that—

16           (1) notwithstanding the provisions of Rule  
17 3015(f), in cases under chapter 13 of title 11,  
18 United States Code, a governmental unit may object  
19 to the confirmation of a plan on or before 60 days  
20 after the debtor files all tax returns required under  
21 sections 1308 and 1325(a)(7) of title 11, United  
22 States Code; and

23           (2) in addition to the provisions of Rule 3007,  
24 in a case under chapter 13 of title 11, United States  
25 Code, no objection to a tax in respect of a return re-

1       quired to be filed under such section 1308 shall be  
2       filed until such return has been filed as required.

3   **SEC. 817. STANDARDS FOR TAX DISCLOSURE.**

4       Section 1125(a) of title 11, United States Code, is  
5   amended in paragraph (1)—

6           (1) by inserting after “records,” the following:  
7       “including a full discussion of the potential material  
8       Federal, State, and local tax consequences of the  
9       plan to the debtor, any successor to the debtor, and  
10      a hypothetical investor domiciled in the State in  
11      which the debtor resides or has its principal place of  
12      business typical of the holders of claims or interests  
13      in the case,”;

14           (2) by inserting “such” after “enable”; and

15           (3) by striking “reasonable” where it appears  
16      after “hypothetical” and by striking “typical of hold-  
17      ers of claims or interests” after “investor”.

18   **SEC. 818. SETOFF OF TAX REFUNDS.**

19      Section 362(b) of title 11, United States Code, as  
20   amended by sections 118, 132, 136, and 203, is  
21   amended—

22           (1) in paragraph (29) by striking “or”;

23           (2) in paragraph (30) by striking the period at  
24      the end and inserting “; or”; and

1           (3) by inserting after paragraph (30) the fol-  
2       lowing:

3           “(31) under subsection (a) of the setoff of an  
4       income tax refund, by a governmental unit, in re-  
5       spect of a taxable period which ended before the  
6       order for relief against an income tax liability for a  
7       taxable period which also ended before the order for  
8       relief, unless—

9           “(A) prior to such setoff, an action to de-  
10       termine the amount or legality of such tax li-  
11       ability under section 505(a) was commenced; or

12           “(B) where the setoff of an income tax re-  
13       fund is not permitted because of a pending ac-  
14       tion to determine the amount or legality of a  
15       tax liability, the governmental unit may hold  
16       the refund pending the resolution of the ac-  
17       tion.”.

18           **TITLE IX—ANCILLARY AND**  
19       **OTHER CROSS-BORDER CASES**

20       **SEC. 901. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11,**  
21       **UNITED STATES CODE.**

22       (a) IN GENERAL.—Title 11, United States Code, is  
23       amended by inserting after chapter 13 the following:



1     **“CHAPTER 15—ANCILLARY AND OTHER**  
2                     **CROSS-BORDER CASES**

“Sec.

“1501. Purpose and scope of application.

“SUBCHAPTER I—GENERAL PROVISIONS

“1502. Definitions.

“1503. International obligations of the United States.

“1504. Commencement of ancillary case.

“1505. Authorization to act in a foreign country.

“1506. Public policy exception.

“1507. Additional assistance.

“1508. Interpretation.

“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND  
CREDITORS TO THE COURT

“1509. Right of direct access.

“1510. Limited jurisdiction.

“1511. Commencement of case under section 301 or 303.

“1512. Participation of a foreign representative in a case under this title.

“1513. Access of foreign creditors to a case under this title.

“1514. Notification to foreign creditors concerning a case under this title.

“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING  
AND RELIEF

“1515. Application for recognition of a foreign proceeding.

“1516. Presumptions concerning recognition.

“1517. Order recognizing a foreign proceeding.

“1518. Subsequent information.

“1519. Relief that may be granted upon petition for recognition of a foreign  
proceeding.

“1520. Effects of recognition of a foreign main proceeding.

“1521. Relief that may be granted upon recognition of a foreign proceeding.

“1522. Protection of creditors and other interested persons.

“1523. Actions to avoid acts detrimental to creditors.

“1524. Intervention by a foreign representative.

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND  
FOREIGN REPRESENTATIVES

“1525. Cooperation and direct communication between the court and foreign  
courts or foreign representatives.

“1526. Cooperation and direct communication between the trustee and foreign  
courts or foreign representatives.

“1527. Forms of cooperation.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

“1528. Commencement of a case under this title after recognition of a foreign  
main proceeding.

“1529. Coordination of a case under this title and a foreign proceeding.

“1530. Coordination of more than 1 foreign proceeding.

“1531. Presumption of insolvency based on recognition of a foreign main proceeding.

“1532. Rule of payment in concurrent proceedings.

1 **“§ 1501. Purpose and scope of application**

2 “(a) The purpose of this chapter is to incorporate the  
3 Model Law on Cross-Border Insolvency so as to provide  
4 effective mechanisms for dealing with cases of cross-border  
5 insolvency with the objectives of—

6 “(1) cooperation between—

7 “(A) United States courts, United States  
8 trustees, trustees, examiners, debtors, and debtors  
9 in possession; and

10 “(B) the courts and other competent authorities  
11 of foreign countries involved in cross-border  
12 insolvency cases;

13 “(2) greater legal certainty for trade and investment;  
14

15 “(3) fair and efficient administration of cross-border  
16 insolvencies that protects the interests of all  
17 creditors, and other interested entities, including the  
18 debtor;

19 “(4) protection and maximization of the value  
20 of the debtor’s assets; and

21 “(5) facilitation of the rescue of financially  
22 troubled businesses, thereby protecting investment  
23 and preserving employment.

24 “(b) This chapter applies where—

1           “(1) assistance is sought in the United States  
2           by a foreign court or a foreign representative in con-  
3           nection with a foreign proceeding;

4           “(2) assistance is sought in a foreign country in  
5           connection with a case under this title;

6           “(3) a foreign proceeding and a case under this  
7           title with respect to the same debtor are taking place  
8           concurrently; or

9           “(4) creditors or other interested persons in a  
10          foreign country have an interest in requesting the  
11          commencement of, or participating in, a case or pro-  
12          ceeding under this title.

13          “(c) This chapter does not apply to—

14               “(1) a proceeding concerning an entity identi-  
15               fied by exclusion in subsection 109(b);

16               “(2) an individual, or to an individual and such  
17               individual’s spouse, who have debts within the limits  
18               specified in section 109(e) and who are citizens of  
19               the United States or aliens lawfully admitted for  
20               permanent residence in the United States; or

21               “(3) an entity subject to a proceeding under the  
22               Securities Investor Protection Act, a stockbroker  
23               subject to subchapter III of chapter 7 of this title,  
24               or a commodity broker subject to subchapter IV of  
25               chapter 7 of this title.

1       “SUBCHAPTER I—GENERAL PROVISIONS

2   **“§ 1502. Definitions**

3       “For the purposes of this chapter, the term—

4           “(1) ‘debtor’ means an entity that is the subject  
5       of a foreign proceeding;

6           “(2) ‘establishment’ means any place of oper-  
7       ations where the debtor carries out a nontransitory  
8       economic activity;

9           “(3) ‘foreign court’ means a judicial or other  
10      authority competent to control or supervise a foreign  
11      proceeding;

12          “(4) ‘foreign main proceeding’ means a foreign  
13      proceeding taking place in the country where the  
14      debtor has the center of its main interests;

15          “(5) ‘foreign nonmain proceeding’ means a for-  
16      eign proceeding, other than a foreign main proceed-  
17      ing, taking place in a country where the debtor has  
18      an establishment;

19          “(6) ‘trustee’ includes a trustee, a debtor in  
20      possession in a case under any chapter of this title,  
21      or a debtor under chapter 9 of this title; and

22          “(7) ‘within the territorial jurisdiction of the  
23      United States’ when used with reference to property  
24      of a debtor refers to tangible property located within  
25      the territory of the United States and intangible

1 property deemed under applicable nonbankruptcy  
2 law to be located within that territory, including any  
3 property subject to attachment or garnishment that  
4 may properly be seized or garnished by an action in  
5 a Federal or State court in the United States.

6 **“§ 1503. International obligations of the United States**

7 “To the extent that this chapter conflicts with an ob-  
8 ligation of the United States arising out of any treaty or  
9 other form of agreement to which it is a party with 1 or  
10 more other countries, the requirements of the treaty or  
11 agreement prevail.

12 **“§ 1504. Commencement of ancillary case**

13 “A case under this chapter is commenced by the filing  
14 of a petition for recognition of a foreign proceeding under  
15 section 1515.

16 **“§ 1505. Authorization to act in a foreign country**

17 “A trustee or another entity (including an examiner)  
18 may be authorized by the court to act in a foreign country  
19 on behalf of an estate created under section 541. An entity  
20 authorized to act under this section may act in any way  
21 permitted by the applicable foreign law.

22 **“§ 1506. Public policy exception**

23 “Nothing in this chapter prevents the court from re-  
24 fusing to take an action governed by this chapter if the

1 action would be manifestly contrary to the public policy  
2 of the United States.

3 **“§ 1507. Additional assistance**

4 “(a) Subject to the specific limitations stated else-  
5 where in this chapter the court, upon recognition of a for-  
6 eign proceeding, the court may provide additional assist-  
7 ance to a foreign representative under this title or under  
8 other laws of the United States.

9 “(b) In determining whether to provide additional as-  
10 sistance under this title or under other laws of the United  
11 States, the court shall consider whether such additional  
12 assistance, consistent with the principles of comity, will  
13 reasonably assure—

14 “(1) just treatment of all holders of claims  
15 against or interests in the debtor’s property;

16 “(2) protection of claim holders in the United  
17 States against prejudice and inconvenience in the  
18 processing of claims in such foreign proceeding;

19 “(3) prevention of preferential or fraudulent  
20 dispositions of property of the debtor;

21 “(4) distribution of proceeds of the debtor’s  
22 property substantially in accordance with the order  
23 prescribed by this title; and

1           “(5) if appropriate, the provision of an oppor-  
2           tunity for a fresh start for the individual that such  
3           foreign proceeding concerns.

4   **“§ 1508. Interpretation**

5           “In interpreting this chapter, the court shall consider  
6           its international origin, and the need to promote an appli-  
7           cation of this chapter that is consistent with the applica-  
8           tion of similar statutes adopted by foreign jurisdictions.  
9   “SUBCHAPTER II—ACCESS OF FOREIGN REP-  
10          RESENTATIVES AND CREDITORS TO THE  
11          COURT

12   **“§ 1509. Right of direct access**

13          “(a) A foreign representative may commence a case  
14          under section 1504 of this title by filing with the court  
15          a petition for recognition of a foreign proceeding under  
16          section 1515 of this title.

17          “(b) If the court grants recognition under section  
18          1515 of this title, and subject to any limitations that the  
19          court may impose consistent with the policy of this  
20          chapter—

21                 “(1) the foreign representative has the capacity  
22                 to sue and be sued in a court in the United States;  
23                 “(2) the foreign representative may apply di-  
24                 rectly to a court in the United States for appropriate  
25                 relief in that court; and

1           “(3) a court in the United States shall grant  
2           comity or cooperation to the foreign representative.

3           “(c) A request for comity or cooperation by a foreign  
4           representative in a court in the United States shall be ac-  
5           companied by a certified copy of an order granting rec-  
6           ognition under section 1517 of this title.

7           “(d) If the court denies recognition under this chap-  
8           ter, the court may issue any appropriate order necessary  
9           to prevent the foreign representative from obtaining com-  
10          ity or cooperation from courts in the United States.

11          “(e) Whether or not the court grants recognition, and  
12          subject to sections 306 and 1510 of this title, a foreign  
13          representative is subject to applicable nonbankruptcy law.

14          “(f) Notwithstanding any other provision of this sec-  
15          tion, the failure of a foreign representative to commence  
16          a case or to obtain recognition under this chapter does  
17          not affect any right the foreign representative may have  
18          to sue in a court in the United State to collect or recover  
19          a claim which is the property of the debtor.”.

20       **“§ 1510. Limited jurisdiction**

21          “The sole fact that a foreign representative files a  
22          petition under section 1515 does not subject the foreign  
23          representative to the jurisdiction of any court in the  
24          United States for any other purpose.



1   **“§ 1511. Commencement of case under section 301 or**  
2                           **303**

3           “(a) Upon recognition, a foreign representative may  
4 commence—

5                   “(1) an involuntary case under section 303; or

6                   “(2) a voluntary case under section 301 or 302,  
7 if the foreign proceeding is a foreign main proceed-  
8 ing.

9           “(b) The petition commencing a case under sub-  
10 section (a) must be accompanied by certified copy of an  
11 order granting recognition. The court where the petition  
12 for recognition has been filed must be advised of the for-  
13 eign representative’s intent to commence a case under sub-  
14 section (a) prior to such commencement.

15   **“§ 1512. Participation of a foreign representative in a**  
16                           **case under this title**

17           “Upon recognition of a foreign proceeding, the for-  
18 eign representative in that proceeding is entitled to par-  
19 ticipate as a party in interest in a case regarding the debt-  
20 or under this title.

21   **“§ 1513. Access of foreign creditors to a case under**  
22                           **this title**

23           “(a) Foreign creditors have the same rights regarding  
24 the commencement of, and participation in, a case under  
25 this title as domestic creditors.

1       “(b)(1) Subsection (a) does not change or codify  
2 present law as to the priority of claims under section 507  
3 or 726 of this title, except that the claim of a foreign cred-  
4 itor under those sections shall not be given a lower priority  
5 than that of general unsecured claims without priority  
6 solely because the holder of such claim is a foreign credi-  
7 tor.

8       “(2)(A) Subsection (a) and paragraph (1) do not  
9 change or codify present law as to the allowability of for-  
10 eign revenue claims or other foreign public law claims in  
11 a proceeding under this title.

12       “(B) Allowance and priority as to a foreign tax claim  
13 or other foreign public law claim shall be governed by any  
14 applicable tax treaty of the United States, under the con-  
15 ditions and circumstances specified therein.

16       **“§ 1514. Notification to foreign creditors concerning a**  
17                               **case under this title**

18       “(a) Whenever in a case under this title notice is to  
19 be given to creditors generally or to any class or category  
20 of creditors, such notice shall also be given to the known  
21 creditors generally, or to creditors in the notified class or  
22 category, that do not have addresses in the United States.  
23 The court may order that appropriate steps be taken with  
24 a view to notifying any creditor whose address is not yet  
25 known.

1       “(b) Such notification to creditors with foreign ad-  
2       dresses described in subsection (a) shall be given individ-  
3       ually, unless the court considers that, under the cir-  
4       cumstances, some other form of notification would be  
5       more appropriate. No letters rogatory or other similar for-  
6       mality is required.

7       “(c) When a notification of commencement of a case  
8       is to be given to foreign creditors, the notification shall—

9               “(1) indicate the time period for filing proofs of  
10       claim and specify the place for their filing;

11              “(2) indicate whether secured creditors need to  
12       file their proofs of claim; and

13              “(3) contain any other information required to  
14       be included in such a notification to creditors under  
15       this title and the orders of the court.

16       “(d) Any rule of procedure or order of the court as  
17       to notice or the filing of a claim shall provide such addi-  
18       tional time to creditors with foreign addresses as is rea-  
19       sonable under the circumstances.

20       “SUBCHAPTER III—RECOGNITION OF A  
21       FOREIGN PROCEEDING AND RELIEF

22       **“§ 1515. Application for recognition of a foreign pro-**  
23       **ceeding**

24       “(a) A foreign representative applies to the court for  
25       recognition of the foreign proceeding in which the foreign

1 representative has been appointed by filing a petition for  
2 recognition.

3 “(b) A petition for recognition shall be accompanied  
4 by—

5 “(1) a certified copy of the decision commene-  
6 ing the foreign proceeding and appointing the for-  
7 eign representative;

8 “(2) a certificate from the foreign court affirm-  
9 ing the existence of the foreign proceeding and of  
10 the appointment of the foreign representative; or

11 “(3) in the absence of evidence referred to in  
12 paragraphs (1) and (2), any other evidence accept-  
13 able to the court of the existence of the foreign pro-  
14 ceeding and of the appointment of the foreign rep-  
15 resentative.

16 “(c) A petition for recognition shall also be accom-  
17 panied by a statement identifying all foreign proceedings  
18 with respect to the debtor that are known to the foreign  
19 representative.

20 “(d) The documents referred to in paragraphs (1)  
21 and (2) of subsection (b) must be translated into English.  
22 The court may require a translation into English of addi-  
23 tional documents.

1   **“§ 1516. Presumptions concerning recognition**

2           “(a) If the decision or certificate referred to in section  
3   1515(b) indicates that the foreign proceeding is a foreign  
4   proceeding as defined in section 101 and that the person  
5   or body is a foreign representative as defined in section  
6   101, the court is entitled to so presume.

7           “(b) The court is entitled to presume that documents  
8   submitted in support of the petition for recognition are  
9   authentic, whether or not they have been legalized.

10          “(c) In the absence of evidence to the contrary, the  
11   debtor’s registered office, or habitual residence in the case  
12   of an individual, is presumed to be the center of the debt-  
13   or’s main interests.

14   **“§ 1517. Order recognizing a foreign proceeding**

15          “(a) Subject to section 1506, after notice and a hear-  
16   ing an order recognizing a foreign proceeding shall be en-  
17   tered if—

18           “(1) the foreign proceeding is a foreign main  
19   proceeding or foreign nonmain proceeding within the  
20   meaning of section 1502;

21           “(2) the foreign representative applying for rec-  
22   ognition is a person or body as defined in section  
23   101; and

24           “(3) the petition meets the requirements of sec-  
25   tion 1515.

26          “(b) The foreign proceeding shall be recognized—

1           “(1) as a foreign main proceeding if it is taking  
2           place in the country where the debtor has the center  
3           of its main interests; or

4           “(2) as a foreign nonmain proceeding if the  
5           debtor has an establishment within the meaning of  
6           section 1502 in the foreign country where the pro-  
7           ceeding is pending.

8           “(c) A petition for recognition of a foreign proceeding  
9           shall be decided upon at the earliest possible time. Entry  
10          of an order recognizing a foreign proceeding constitutes  
11          recognition under this chapter.

12          “(d) The provisions of this subchapter do not prevent  
13          modification or termination of recognition if it is shown  
14          that the grounds for granting it were fully or partially  
15          lacking or have ceased to exist, but in considering such  
16          action the court shall give due weight to possible prejudice  
17          to parties that have relied upon the granting of recogni-  
18          tion. The case under this chapter may be closed in the  
19          manner prescribed under section 350.

20          **“§ 1518. Subsequent information**

21          “From the time of filing the petition for recognition  
22          of the foreign proceeding, the foreign representative shall  
23          file with the court promptly a notice of change of status  
24          concerning—

1           “(1) any substantial change in the status of the  
2           foreign proceeding or the status of the foreign rep-  
3           resentative’s appointment; and

4           “(2) any other foreign proceeding regarding the  
5           debtor that becomes known to the foreign represent-  
6           ative.

7   **“§ 1519. Relief that may be granted upon petition for**  
8           **recognition of a foreign proceeding**

9           “(a) From the time of filing a petition for recognition  
10          until the court rules on the petition, the court may, at  
11          the request of the foreign representative, where relief is  
12          urgently needed to protect the assets of the debtor or the  
13          interests of the creditors, grant relief of a provisional na-  
14          ture, including—

15               “(1) staying execution against the debtor’s as-  
16               sets;

17               “(2) entrusting the administration or realiza-  
18               tion of all or part of the debtor’s assets located in  
19               the United States to the foreign representative or  
20               another person authorized by the court, including an  
21               examiner, in order to protect and preserve the value  
22               of assets that, by their nature or because of other  
23               circumstances, are perishable, susceptible to devalu-  
24               ation or otherwise in jeopardy; and

1           “(3) any relief referred to in paragraph (3),  
2           (4), or (7) of section 1521(a).

3           “(b) Unless extended under section 1521(a)(6), the  
4 relief granted under this section terminates when the peti-  
5 tion for recognition is decided upon.

6           “(c) It is a ground for denial of relief under this sec-  
7 tion that such relief would interfere with the administra-  
8 tion of a foreign main proceeding.

9           “(d) The court may not enjoin a police or regulatory  
10 act of a governmental unit, including a criminal action or  
11 proceeding, under this section.

12           “(e) The standards, procedures, and limitations ap-  
13 plicable to an injunction shall apply to relief under this  
14 section.

15 **“§ 1520. Effects of recognition of a foreign main pro-**  
16 **ceeding**

17           “(a) Upon recognition of a foreign proceeding that  
18 is a foreign main proceeding—

19           “(1) sections 361 and 362 with respect to the  
20 debtor and that property of the debtor that is within  
21 the territorial jurisdiction of the United States;

22           “(2) sections 363, 549, and 552 of this title  
23 apply to a transfer of an interest of the debtor in  
24 property that is within the territorial jurisdiction of



1 the United States to the same extent that the sec-  
2 tions would apply to property of an estate;

3 “(3) unless the court orders otherwise, the for-  
4 eign representative may operate the debtor’s busi-  
5 ness and may exercise the rights and powers of a  
6 trustee under and to the extent provided by sections  
7 363 and 552; and

8 “(4) section 552 applies to property of the debt-  
9 or that is within the territorial jurisdiction of the  
10 United States.”.

11 “(b) Subsection (a) does not affect the right to com-  
12 mence an individual action or proceeding in a foreign  
13 country to the extent necessary to preserve a claim against  
14 the debtor.

15 “(c) Subsection (a) does not affect the right of a for-  
16 eign representative or an entity to file a petition commene-  
17 ing a case under this title or the right of any party to  
18 file claims or take other proper actions in such a case.

19 **“§ 1521. Relief that may be granted upon recognition**  
20 **of a foreign proceeding**

21 “(a) Upon recognition of a foreign proceeding, wheth-  
22 er main or nonmain, where necessary to effectuate the  
23 purpose of this chapter and to protect the assets of the  
24 debtor or the interests of the creditors, the court may, at

1 the request of the foreign representative, grant any appro-  
2 priate relief, including—

3 “(1) staying the commencement or continuation  
4 of an individual action or proceeding concerning the  
5 debtor’s assets, rights, obligations or liabilities to the  
6 extent they have not been stayed under section  
7 1520(a);

8 “(2) staying execution against the debtor’s as-  
9 sets to the extent it has not been stayed under sec-  
10 tion 1520(a);

11 “(3) suspending the right to transfer, encumber  
12 or otherwise dispose of any assets of the debtor to  
13 the extent this right has not been suspended under  
14 section 1520(a);

15 “(4) providing for the examination of witnesses,  
16 the taking of evidence or the delivery of information  
17 concerning the debtor’s assets, affairs, rights, obliga-  
18 tions or liabilities;

19 “(5) entrusting the administration or realiza-  
20 tion of all or part of the debtor’s assets within the  
21 territorial jurisdiction of the United States to the  
22 foreign representative or another person, including  
23 an examiner, authorized by the court;

24 “(6) extending relief granted under section  
25 1519(a); and

1           “(7) granting any additional relief that may be  
2           available to a trustee, except for relief available  
3           under sections 522, 544, 545, 547, 548, 550, and  
4           724(a).

5           “(b) Upon recognition of a foreign proceeding, wheth-  
6           er main or nonmain, the court may, at the request of the  
7           foreign representative, entrust the distribution of all or  
8           part of the debtor’s assets located in the United States  
9           to the foreign representative or another person, including  
10          an examiner, authorized by the court, provided that the  
11          court is satisfied that the interests of creditors in the  
12          United States are sufficiently protected.

13          “(c) In granting relief under this section to a rep-  
14          resentative of a foreign nonmain proceeding, the court  
15          must be satisfied that the relief relates to assets that,  
16          under the law of the United States, should be adminis-  
17          tered in the foreign nonmain proceeding or concerns infor-  
18          mation required in that proceeding.

19          “(d) The court may not enjoin a police or regulatory  
20          act of a governmental unit, including a criminal action or  
21          proceeding, under this section.

22          “(e) The standards, procedures, and limitations ap-  
23          plicable to an injunction shall apply to relief under para-  
24          graphs (1), (2), (3), and (6) of subsection (a).

1   **“§ 1522. Protection of creditors and other interested**  
2                   **persons**

3           “(a) The court may grant relief under section 1519  
4 or 1521, or may modify or terminate relief under sub-  
5 section (c), only if the interests of the creditors and other  
6 interested entities, including the debtor, are sufficiently  
7 protected.

8           “(b) The court may subject relief granted under sec-  
9 tion 1519 or 1521, or the operation of the debtor’s busi-  
10 ness under section 1520(a)(3) of this title, to conditions  
11 it considers appropriate, including the giving of security  
12 or the filing of a bond.

13           “(c) The court may, at the request of the foreign rep-  
14 resentative or an entity affected by relief granted under  
15 section 1519 or 1521, or at its own motion, modify or  
16 terminate such relief.

17           “(d) Section 1104(d) shall apply to the appointment  
18 of an examiner under this chapter. Any examiner shall  
19 comply with the qualification requirements imposed on a  
20 trustee by section 322.

21   **“§ 1523. Actions to avoid acts detrimental to creditors**

22           “(a) Upon recognition of a foreign proceeding, the  
23 foreign representative has standing in a case concerning  
24 the debtor pending under another chapter of this title to  
25 initiate actions under sections 522, 544, 545, 547, 548,  
26 550, and 724(a).

1       “(b) When the foreign proceeding is a foreign  
2 nonmain proceeding, the court must be satisfied that an  
3 action under subsection (a) relates to assets that, under  
4 United States law, should be administered in the foreign  
5 nonmain proceeding.

6       **“§ 1524. Intervention by a foreign representative**

7       “Upon recognition of a foreign proceeding, the for-  
8 eign representative may intervene in any proceedings in  
9 a State or Federal court in the United States in which  
10 the debtor is a party.

11       “SUBCHAPTER IV—COOPERATION WITH FOR-  
12       EIGN COURTS AND FOREIGN REPRESENTA-  
13       TIVES

14       **“§ 1525. Cooperation and direct communication be-**  
15               **tween the court and foreign courts or for-**  
16               **eign representatives**

17       “(a) Consistent with section 1501, the court shall co-  
18 operate to the maximum extent possible with foreign  
19 courts or foreign representatives, either directly or  
20 through the trustee.

21       “(b) The court is entitled to communicate directly  
22 with, or to request information or assistance directly from,  
23 foreign courts or foreign representatives, subject to the  
24 rights of parties in interest to notice and participation.

1   **“§ 1526. Cooperation and direct communication be-**  
2                   **tween the trustee and foreign courts or**  
3                   **foreign representatives**

4           “(a) Consistent with section 1501, the trustee or  
5 other person, including an examiner, authorized by the  
6 court, shall, subject to the supervision of the court, cooper-  
7 ate to the maximum extent possible with foreign courts  
8 or foreign representatives.

9           “(b) The trustee or other person, including an exam-  
10 iner, authorized by the court is entitled, subject to the su-  
11 pervision of the court, to communicate directly with for-  
12 eign courts or foreign representatives.

13   **“§ 1527. Forms of cooperation**

14           “Cooperation referred to in sections 1525 and 1526  
15 may be implemented by any appropriate means,  
16 including—

17           “(1) appointment of a person or body, including  
18 an examiner, to act at the direction of the court;

19           “(2) communication of information by any  
20 means considered appropriate by the court;

21           “(3) coordination of the administration and su-  
22 pervision of the debtor’s assets and affairs;

23           “(4) approval or implementation of agreements  
24 concerning the coordination of proceedings; and

25           “(5) coordination of concurrent proceedings re-  
26 garding the same debtor.

## 1 “SUBCHAPTER V—CONCURRENT PROCEEDINGS

## 2 “§ 1528. Commencement of a case under this title

## 3 after recognition of a foreign main pro-

## 4 ceeding

5 “After recognition of a foreign main proceeding, a  
6 case under another chapter of this title may be commenced  
7 only if the debtor has assets in the United States. The  
8 effects of such case shall be restricted to the assets of the  
9 debtor that are within the territorial jurisdiction of the  
10 United States and, to the extent necessary to implement  
11 cooperation and coordination under sections 1525, 1526,  
12 and 1527, to other assets of the debtor that are within  
13 the jurisdiction of the court under sections 541(a) of this  
14 title, and 1334(e) of title 28, to the extent that such other  
15 assets are not subject to the jurisdiction and control of  
16 a foreign proceeding that has been recognized under this  
17 chapter.

## 18 “§ 1529. Coordination of a case under this title and a

## 19 foreign proceeding

20 “Where a foreign proceeding and a case under an-  
21 other chapter of this title are taking place concurrently  
22 regarding the same debtor, the court shall seek coopera-  
23 tion and coordination under sections 1525, 1526, and  
24 1527, and the following shall apply:

1           “(1) When the case in the United States is tak-  
2           ing place at the time the petition for recognition of  
3           the foreign proceeding is filed—

4                   “(A) any relief granted under sections  
5           1519 or 1521 must be consistent with the relief  
6           granted in the case in the United States; and

7                   “(B) even if the foreign proceeding is rec-  
8           ognized as a foreign main proceeding, section  
9           1520 does not apply.

10           “(2) When a case in the United States under  
11           this title commences after recognition, or after the  
12           filing of the petition for recognition, of the foreign  
13           proceeding—

14                   “(A) any relief in effect under sections  
15           1519 or 1521 shall be reviewed by the court  
16           and shall be modified or terminated if inconsis-  
17           tent with the case in the United States; and

18                   “(B) if the foreign proceeding is a foreign  
19           main proceeding, the stay and suspension re-  
20           ferred to in section 1520(a) shall be modified or  
21           terminated if inconsistent with the relief grant-  
22           ed in the case in the United States.

23           “(3) In granting, extending, or modifying relief  
24           granted to a representative of a foreign nonmain  
25           proceeding, the court must be satisfied that the re-



1        relief relates to assets that, under the law of the  
2        United States, should be administered in the foreign  
3        nonmain proceeding or concerns information re-  
4        quired in that proceeding.

5            “(4) In achieving cooperation and coordination  
6        under sections 1528 and 1529, the court may grant  
7        any of the relief authorized under section 305.

8        **“§ 1530. Coordination of more than 1 foreign proceed-**  
9            **ing**

10        “In matters referred to in section 1501, with respect  
11        to more than 1 foreign proceeding regarding the debtor,  
12        the court shall seek cooperation and coordination under  
13        sections 1525, 1526, and 1527, and the following shall  
14        apply:

15            “(1) Any relief granted under section 1519 or  
16        1521 to a representative of a foreign nonmain pro-  
17        ceeding after recognition of a foreign main proceed-  
18        ing must be consistent with the foreign main pro-  
19        ceeding.

20            “(2) If a foreign main proceeding is recognized  
21        after recognition, or after the filing of a petition for  
22        recognition, of a foreign nonmain proceeding, any  
23        relief in effect under section 1519 or 1521 shall be  
24        reviewed by the court and shall be modified or termi-

1       nated if inconsistent with the foreign main proceed-  
2       ing.

3           “(3) If, after recognition of a foreign nonmain  
4       proceeding, another foreign nonmain proceeding is  
5       recognized, the court shall grant, modify, or termi-  
6       nate relief for the purpose of facilitating coordina-  
7       tion of the proceedings.

8       **“§ 1531. Presumption of insolvency based on recogni-**  
9               **tion of a foreign main proceeding**

10       “‘In the absence of evidence to the contrary, recogni-  
11      tion of a foreign main proceeding is for the purpose of  
12      commencing a proceeding under section 303, proof that  
13      the debtor is generally not paying its debts as such debts  
14      become due.

15       **“§ 1532. Rule of payment in concurrent proceedings**

16       “‘Without prejudice to secured claims or rights in  
17      rem, a creditor who has received payment with respect to  
18      its claim in a foreign proceeding pursuant to a law relating  
19      to insolvency may not receive a payment for the same  
20      claim in a case under any other chapter of this title re-  
21      garding the debtor, so long as the payment to other credi-  
22      tors of the same class is proportionately less than the pay-  
23      ment the creditor has already received.”.

1 (b) CLERICAL AMENDMENT.—The table of chapters  
2 for title 11, United States Code, is amended by inserting  
3 after the item relating to chapter 13 the following:

“15. Ancillary and Other Cross-Border Cases ..... 1501”.

4 **SEC. 902. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11,**  
5 **UNITED STATES CODE.**

6 (a) APPLICABILITY OF CHAPTERS.—Section 103 of  
7 title 11, United States Code, is amended—

8 (1) in subsection (a), by inserting before the pe-  
9 riod the following: “, and this chapter, sections 307,  
10 304, 555 through 557, 559, and 560 apply in a case  
11 under chapter 15”; and

12 (2) by adding at the end the following:

13 “(j) Chapter 15 applies only in a case under such  
14 chapter, except that—

15 “(1) sections 1505, 1513, and 1514 apply in all  
16 cases under this title; and

17 “(2) section 1509 applies whether or not a case  
18 under this title is pending.”.

19 (b) DEFINITIONS.—Paragraphs (23) and (24) of title  
20 11, United States Code, are amended to read as follows:

21 “(23) ‘foreign proceeding’ means a collective ju-  
22 dicial or administrative proceeding in a foreign coun-  
23 try, including an interim proceeding, under a law re-  
24 lating to insolvency or adjustment of debt in which  
25 proceeding the assets and affairs of the debtor are

1 subject to control or supervision by a foreign court,  
2 for the purpose of reorganization or liquidation;

3 “(24) ‘foreign representative’ means a person  
4 or body, including a person or body appointed on an  
5 interim basis, authorized in a foreign proceeding to  
6 administer the reorganization or the liquidation of  
7 the debtor’s assets or affairs or to act as a rep-  
8 resentative of the foreign proceeding;”.

9 (c) AMENDMENTS TO TITLE 28, UNITED STATES  
10 CODE.—

11 (1) PROCEDURES.—Section 157(b)(2) of title  
12 28, United States Code, is amended—

13 (A) in subparagraph (N), by striking  
14 “and” at the end;

15 (B) in subparagraph (O), by striking the  
16 period at the end and inserting “; and”; and

17 (C) by adding at the end the following:

18 “(P) recognition of foreign proceedings and  
19 other matters under chapter 15 of title 11.”.

20 (2) BANKRUPTCY CASES AND PROCEEDINGS.—

21 Section 1334(c) of title 28, United States Code, is  
22 amended by striking “Nothing in” and inserting  
23 “Except with respect to a case under chapter 15 of  
24 title 11, nothing in”.

1           (3) DUTIES OF TRUSTEES.—Section 586(a)(3)  
2           of title 28, United States Code, is amended by strik-  
3           ing “or 13” and inserting “13, or 15,” after “chap-  
4           ter”.

5           (4) Section 305(a)(2) of title 11, United States  
6           Code, is amended to read:

7           “(2)(A) a petition under section 1515 of this  
8           title for recognition of a foreign proceeding has been  
9           granted; and

10          “(B) the purposes of chapter 15 of this title  
11          would be best served by such dismissal or suspen-  
12          sion.”.

13          (5) Section 508 of title 11, United States Code,  
14          is amended by striking subsection (a) and by strik-  
15          ing out the letter “(b)” at the beginning of the sec-  
16          ond paragraph.

17       **TITLE X—FINANCIAL CONTRACT**  
18       **PROVISIONS**

19       **SEC. 1001. TREATMENT OF CERTAIN AGREEMENTS BY CON-**  
20               **SERVATORS OR RECEIVERS OF INSURED DE-**  
21               **POSITORY INSTITUTIONS.**

22          (a) DEFINITION OF QUALIFIED FINANCIAL CON-  
23       TRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit In-  
24       surance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by

1 inserting “, resolution or order” after “any similar agree-  
2 ment that the Corporation determines by regulation”.

3 (b) DEFINITION OF SECURITIES CONTRACT.—Sec-  
4 tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act  
5 (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-  
6 lows:

7 “(ii) SECURITIES CONTRACT.—The  
8 term ‘securities contract’—

9 “(I) means a contract for the  
10 purchase, sale, or loan of a security, a  
11 certificate of deposit, a mortgage loan,  
12 or any interest in a mortgage loan, a  
13 group or index of securities, certifi-  
14 cates of deposit, or mortgage loans or  
15 interests therein (including any inter-  
16 est therein or based on the value  
17 thereof) or any option on any of the  
18 foregoing, including any option to  
19 purchase or sell any such security,  
20 certificate of deposit, loan, interest,  
21 group or index, or option;

22 “(II) does not include any pur-  
23 chase, sale, or repurchase obligation  
24 under a participation in a commercial  
25 mortgage loan unless the Corporation

1 determines by regulation, resolution,  
2 or order to include any such agree-  
3 ment within the meaning of such  
4 term;

5 “(III) means any option entered  
6 into on a national securities exchange  
7 relating to foreign currencies;

8 “(IV) means the guarantee by or  
9 to any securities clearing agency of  
10 any settlement of cash, securities, cer-  
11 tificates of deposit, mortgage loans or  
12 interests therein, group or index of se-  
13 curities, certificates of deposit, or  
14 mortgage loans or interests therein  
15 (including any interest therein or  
16 based on the value thereof) or option  
17 on any of the foregoing, including any  
18 option to purchase or sell any such se-  
19 curity, certificate of deposit, loan, in-  
20 terest, group or index or option;

21 “(V) means any margin loan;

22 “(VI) means any other agree-  
23 ment or transaction that is similar to  
24 any agreement or transaction referred  
25 to in this clause;

1                   “(VII) means any combination of  
2                   the agreements or transactions re-  
3                   ferred to in this clause;

4                   “(VIII) means any option to  
5                   enter into any agreement or trans-  
6                   action referred to in this clause;

7                   “(IX) means a master agreement  
8                   that provides for an agreement or  
9                   transaction referred to in subclause  
10                  (I), (III), (IV), (V), (VI), (VII), or  
11                  (VIII), together with all supplements  
12                  to any such master agreement, with-  
13                  out regard to whether the master  
14                  agreement provides for an agreement  
15                  or transaction that is not a securities  
16                  contract under this clause, except that  
17                  the master agreement shall be consid-  
18                  ered to be a securities contract under  
19                  this clause only with respect to each  
20                  agreement or transaction under the  
21                  master agreement that is referred to  
22                  in subclause (I), (III), (IV), (V), (VI),  
23                  (VII), or (VIII); and

24                  “(X) means any security agree-  
25                  ment or arrangement or other credit



1 enhancement related to any agree-  
2 ment or transaction referred to in this  
3 clause.”.

4 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-  
5 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act  
6 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-  
7 lows:

8 “(iii) COMMODITY CONTRACT.—The  
9 term ‘commodity contract’ means—

10 “(I) with respect to a futures  
11 commission merchant, a contract for  
12 the purchase or sale of a commodity  
13 for future delivery on, or subject to  
14 the rules of, a contract market or  
15 board of trade;

16 “(II) with respect to a foreign fu-  
17 tures commission merchant, a foreign  
18 future;

19 “(III) with respect to a leverage  
20 transaction merchant, a leverage  
21 transaction;

22 “(IV) with respect to a clearing  
23 organization, a contract for the pur-  
24 chase or sale of a commodity for fu-  
25 ture delivery on, or subject to the

1 rules of, a contract market or board  
2 of trade that is cleared by such clear-  
3 ing organization, or commodity option  
4 traded on, or subject to the rules of,  
5 a contract market or board of trade  
6 that is cleared by such clearing orga-  
7 nization;

8 “(V) with respect to a commodity  
9 options dealer, a commodity option;

10 “(VI) any other agreement or  
11 transaction that is similar to any  
12 agreement or transaction referred to  
13 in this clause;

14 “(VII) any combination of the  
15 agreements or transactions referred to  
16 in this clause;

17 “(VIII) any option to enter into  
18 any agreement or transaction referred  
19 to in this clause;

20 “(IX) a master agreement that  
21 provides for an agreement or trans-  
22 action referred to in subclause (I),  
23 (II), (III), (IV), (V), (VI), (VII), or  
24 (VIII), together with all supplements  
25 to any such master agreement, with-

1 out regard to whether the master  
2 agreement provides for an agreement  
3 or transaction that is not a commod-  
4 ity contract under this clause, except  
5 that the master agreement shall be  
6 considered to be a commodity contract  
7 under this clause only with respect to  
8 each agreement or transaction under  
9 the master agreement that is referred  
10 to in subclause (I), (II), (III), (IV),  
11 (V), (VI), (VII), or (VIII); or

12 “(X) a security agreement or ar-  
13 rangement or other credit enhance-  
14 ment related to any agreement or  
15 transaction referred to in this  
16 clause.”.

17 (d) DEFINITION OF FORWARD CONTRACT.—Section  
18 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12  
19 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

20 “(iv) FORWARD CONTRACT.—The  
21 term ‘forward contract’ means—

22 “(I) a contract (other than a  
23 commodity contract) for the purchase,  
24 sale, or transfer of a commodity or  
25 any similar good, article, service,

1 right, or interest which is presently or  
2 in the future becomes the subject of  
3 dealing in the forward contract trade,  
4 or product or byproduct thereof, with  
5 a maturity date more than 2 days  
6 after the date the contract is entered  
7 into, including, but not limited to, a  
8 repurchase agreement, reverse repur-  
9 chase agreement, consignment, lease,  
10 swap, hedge transaction, deposit, loan,  
11 option, allocated transaction,  
12 unallocated transaction, or any other  
13 similar agreement;

14 “(II) any combination of agree-  
15 ments or transactions referred to in  
16 subclauses (I) and (III);

17 “(III) any option to enter into  
18 any agreement or transaction referred  
19 to in subclause (I) or (II);

20 “(IV) a master agreement that  
21 provides for an agreement or trans-  
22 action referred to in subclauses (I),  
23 (II), or (III), together with all supple-  
24 ments to any such master agreement,  
25 without regard to whether the master

1 agreement provides for an agreement  
2 or transaction that is not a forward  
3 contract under this clause, except that  
4 the master agreement shall be consid-  
5 ered to be a forward contract under  
6 this clause only with respect to each  
7 agreement or transaction under the  
8 master agreement that is referred to  
9 in subclause (I), (II), or (III); or

10 “(V) a security agreement or ar-  
11 rangement or other credit enhance-  
12 ment related to any agreement or  
13 transaction referred to in subclause  
14 (I), (II), (III), or (IV).”.

15 (e) DEFINITION OF REPURCHASE AGREEMENT.—  
16 Section 11(e)(8)(D)(v) of the Federal Deposit Insurance  
17 Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as  
18 follows:

19 “(v) REPURCHASE AGREEMENT.—The  
20 term ‘repurchase agreement’ (which defini-  
21 tion also applies to a reverse repurchase  
22 agreement)—

23 “(I) mean an agreement, includ-  
24 ing related terms, which provides for  
25 the transfer of 1 or more certificates

1 of deposit, mortgage-related securities  
2 (as such term is defined in the Securi-  
3 ties Exchange Act of 1934), mortgage  
4 loans, interests in mortgage-related  
5 securities or mortgage loans, eligible  
6 bankers' acceptances, qualified foreign  
7 government securities or securities  
8 that are direct obligations of, or that  
9 are fully guaranteed by, the United  
10 States or any agency of the United  
11 States against the transfer of funds  
12 by the transferee of such certificates  
13 of deposit, eligible bankers' accept-  
14 ances, securities, loans, or interests  
15 with a simultaneous agreement by  
16 such transferee to transfer to the  
17 transferor thereof certificates of de-  
18 posit, eligible bankers' acceptances,  
19 securities, loans, or interests as de-  
20 scribed above, at a date certain not  
21 later than 1 year after such transfers  
22 or on demand, against the transfer of  
23 funds, or any other similar agreement;  
24 “(II) does not include any repur-  
25 chase obligation under a participation

1 in a commercial mortgage loan unless  
2 the Corporation determines by regula-  
3 tion, resolution, or order to include  
4 any such participation within the  
5 meaning of such term;

6 “(III) means any combination of  
7 agreements or transactions referred to  
8 in subclauses (I) and (IV);

9 “(IV) means any option to enter  
10 into any agreement or transaction re-  
11 ferred to in subclause (I) or (III);

12 “(V) means a master agreement  
13 that provides for an agreement or  
14 transaction referred to in subclause  
15 (I), (III), or (IV), together with all  
16 supplements to any such master  
17 agreement, without regard to whether  
18 the master agreement provides for an  
19 agreement or transaction that is not a  
20 repurchase agreement under this  
21 clause, except that the master agree-  
22 ment shall be considered to be a re-  
23 purchase agreement under this sub-  
24 clause only with respect to each agree-  
25 ment or transaction under the master

1 agreement that is referred to in sub-  
2 clause (I), (III), or (IV); and

3 “(VI) means a security agree-  
4 ment or arrangement or other credit  
5 enhancement related to any agree-  
6 ment or transaction referred to in  
7 subclause (I), (III), (IV), or (V).

8 For purposes of this clause, the term  
9 ‘qualified foreign government security’  
10 means a security that is a direct obligation  
11 of, or that is fully guaranteed by, the cen-  
12 tral government of a member of the Orga-  
13 nization for Economic Cooperation and  
14 Development (as determined by regulation  
15 or order adopted by the appropriate Fed-  
16 eral banking authority).”.

17 (f) DEFINITION OF SWAP AGREEMENT.—Section  
18 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12  
19 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

20 “(vi) SWAP AGREEMENT.—The term  
21 ‘swap agreement’ means—

22 “(I) any agreement, including the  
23 terms and conditions incorporated by  
24 reference in any such agreement,  
25 which is an interest rate swap, option,



1 future, or forward agreement, includ-  
2 ing a rate floor, rate cap, rate collar,  
3 cross-currency rate swap, and basis  
4 swap; a spot, same day-tomorrow, to-  
5 morrow-next, forward, or other for-  
6 eign exchange or precious metals  
7 agreement; a currency swap, option,  
8 future, or forward agreement; an eq-  
9 uity index or equity swap, option, fu-  
10 ture, or forward agreement; a debt  
11 index or debt swap, option, future, or  
12 forward agreement; a credit spread or  
13 credit swap, option, future, or forward  
14 agreement; a commodity index or  
15 commodity swap, option, future, or  
16 forward agreement;

17 “(II) any agreement or trans-  
18 action similar to any other agreement  
19 or transaction referred to in this  
20 clause that is presently, or in the fu-  
21 ture becomes, regularly entered into  
22 in the swap market (including terms  
23 and conditions incorporated by ref-  
24 erence in such agreement) and that is  
25 a forward, swap, future, or option on

1 1 or more rates, currencies, commod-  
2 ities, equity securities or other equity  
3 instruments, debt securities or other  
4 debt instruments, or economic indices  
5 or measures of economic risk or value;

6 “(III) any combination of agree-  
7 ments or transactions referred to in  
8 this clause;

9 “(IV) any option to enter into  
10 any agreement or transaction referred  
11 to in this clause;

12 “(V) a master agreement that  
13 provides for an agreement or trans-  
14 action referred to in subclause (I),  
15 (II), (III), or (IV), together with all  
16 supplements to any such master  
17 agreement, without regard to whether  
18 the master agreement contains an  
19 agreement or transaction that is not a  
20 swap agreement under this clause, ex-  
21 cept that the master agreement shall  
22 be considered to be a swap agreement  
23 under this clause only with respect to  
24 each agreement or transaction under  
25 the master agreement that is referred

1 to in subclause (I), (II), (III), or (IV);  
2 and

3 “(VI) any security agreement or  
4 arrangement or other credit enhance-  
5 ment related to any agreements or  
6 transactions referred to in subpara-  
7 graph (I), (II), (III), or (IV).

8 Such term is applicable for purposes of  
9 this title only and shall not be construed or  
10 applied so as to challenge or affect the  
11 characterization, definition, or treatment of  
12 any swap agreement under any other stat-  
13 ute, regulation, or rule, including the Secu-  
14 rities Act of 1933, the Securities Exchange  
15 Act of 1934, the Public Utility Holding  
16 Company Act of 1935, the Trust Indenture  
17 Act of 1939, the Investment Company Act  
18 of 1940, the Investment Advisers Act of  
19 1940, the Securities Investor Protection  
20 Act of 1970, the Commodity Exchange  
21 Act, and the regulations promulgated by  
22 the Securities and Exchange Commission  
23 or the Commodity Futures Trading Com-  
24 mission.”.

1           (g)       DEFINITION       OF       TRANSFER.—Section  
2 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12  
3 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

4                       “(viii) TRANSFER.—The term ‘trans-  
5                       fer’ means every mode, direct or indirect,  
6                       absolute or conditional, voluntary or invol-  
7                       untary, of disposing of or parting with  
8                       property or with an interest in property,  
9                       including retention of title as a security in-  
10                      terest and foreclosure of the depository  
11                      institutions’s equity of redemption.”.

12       (h) TREATMENT OF QUALIFIED FINANCIAL CON-  
13 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-  
14 ance Act (12 U.S.C. 1821(e)(8)) is amended—

15           (1) in subparagraph (A), by striking “para-  
16           graph (10)” and inserting “paragraphs (9) and  
17           (10)”;

18           (2) in subparagraph (A)(i), by striking “to  
19           cause the termination or liquidation” and inserting  
20           “such person has to cause the termination, liquida-  
21           tion, or acceleration”;

22           (3) by amending subparagraph (A)(ii) to read  
23           as follows:

24                       “(ii) any right under any security  
25                       agreement or arrangement or other credit

1 enhancement related to 1 or more qualified  
2 financial contracts described in clause  
3 (i);” and

4 (4) by amending subparagraph (E)(ii) to read  
5 as follows:

6 “(ii) any right under any security  
7 agreement or arrangement or other credit  
8 enhancement related to 1 or more qualified  
9 financial contracts described in clause  
10 (i);”.

11 (i) AVOIDANCE OF TRANSFERS.—Section  
12 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12  
13 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section  
14 5242 of the Revised Statutes of the United States (12  
15 U.S.C. 91) or any other Federal or State law relating to  
16 the avoidance of preferential or fraudulent transfers,” be-  
17 fore “the Corporation”.

18 **SEC. 1002. AUTHORITY OF THE CORPORATION WITH RE-**  
19 **SPECT TO FAILED AND FAILING INSTITU-**  
20 **TIONS.**

21 (a) IN GENERAL.—Section 11(e)(8) of the Federal  
22 Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is  
23 amended—

24 (1) in subparagraph (E), by striking “other  
25 than paragraph (12) of this subsection, subsection

1       (d)(9)” and inserting “other than subsections (d)(9)  
2       and (e)(10)”;

3               (2) by adding at the end the following new sub-  
4       paragraphs:

5               “(F) CLARIFICATION.—No provision of law  
6       shall be construed as limiting the right or  
7       power of the Corporation, or authorizing any  
8       court or agency to limit or delay, in any man-  
9       ner, the right or power of the Corporation to  
10      transfer any qualified financial contract in ac-  
11      cordance with paragraphs (9) and (10) of this  
12      subsection or to disaffirm or repudiate any such  
13      contract in accordance with subsection (e)(1) of  
14      this section.

15              “(G) WALKAWAY CLAUSES NOT EFFEC-  
16      TIVE.—

17              “(i) IN GENERAL.—Notwithstanding  
18      the provisions of subparagraphs (A) and  
19      (E), and sections 403 and 404 of the Fed-  
20      eral Deposit Insurance Corporation Im-  
21      provement Act of 1991, no walkaway  
22      clause shall be enforceable in a qualified fi-  
23      nancial contract of an insured depository  
24      institution in default.

1 “(ii) WALKAWAY CLAUSE DEFINED.—

2 For purposes of this subparagraph, the  
3 term ‘walkaway clause’ means a provision  
4 in a qualified financial contract that, after  
5 calculation of a value of a party’s position  
6 or an amount due to or from 1 of the par-  
7 ties in accordance with its terms upon ter-  
8 mination, liquidation, or acceleration of the  
9 qualified financial contract, either does not  
10 create a payment obligation of a party or  
11 extinguishes a payment obligation of a  
12 party in whole or in part solely because of  
13 such party’s status as a nondefaulting  
14 party.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENT.—

16 Section 11(e)(12)(A) of the Federal Deposit Insurance  
17 Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting  
18 “or the exercise of rights or powers” after “the appoint-  
19 ment”.

20 **SEC. 1003. AMENDMENTS RELATING TO TRANSFERS OF**  
21 **QUALIFIED FINANCIAL CONTRACTS.**

22 (a) TRANSFERS OF QUALIFIED FINANCIAL CON-  
23 TRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9)  
24 of the Federal Deposit Insurance Act (12 U.S.C.  
25 1821(e)(9)) is amended to read as follows:

1           “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
2           TRACTS.—

3           “(A) IN GENERAL.—In making any trans-  
4           fer of assets or liabilities of a depository institu-  
5           tion in default which includes any qualified fi-  
6           nancial contract, the conservator or receiver for  
7           such depository institution shall either—

8           “(i) transfer to 1 financial institution,  
9           other than a financial institution for which  
10          a conservator, receiver, trustee in bank-  
11          ruptcy, or other legal custodian has been  
12          appointed or which is otherwise the subject  
13          of a bankruptcy or insolvency proceeding—

14          “(I) all qualified financial con-  
15          tracts between any person or any af-  
16          filiate of such person and the deposi-  
17          tory institution in default;

18          “(II) all claims of such person or  
19          any affiliate of such person against  
20          such depository institution under any  
21          such contract (other than any claim  
22          which, under the terms of any such  
23          contract, is subordinated to the claims  
24          of general unsecured creditors of such  
25          institution);



1                   “(III) all claims of such deposi-  
2                   tory institution against such person or  
3                   any affiliate of such person under any  
4                   such contract; and

5                   “(IV) all property securing or  
6                   any other credit enhancement for any  
7                   contract described in subclause (I) or  
8                   any claim described in subclause (II)  
9                   or (III) under any such contract; or

10                  “(ii) transfer none of the qualified fi-  
11                  nancial contracts, claims, property or other  
12                  credit enhancement referred to in clause (i)  
13                  (with respect to such person and any affili-  
14                  ate of such person).

15                  “(B) TRANSFER TO FOREIGN BANK, FOR-  
16                  EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
17                  AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
18                  STITUTION.—In transferring any qualified fi-  
19                  nancial contracts and related claims and prop-  
20                  erty pursuant to subparagraph (A)(i), the con-  
21                  servator or receiver for such depository institu-  
22                  tion shall not make such transfer to a foreign  
23                  bank, financial institution organized under the  
24                  laws of a foreign country, or a branch or agency  
25                  of a foreign bank or financial institution unless,

1 under the law applicable to such bank, financial  
2 institution, branch or agency, to the qualified  
3 financial contracts, and to any netting contract,  
4 any security agreement or arrangement or other  
5 credit enhancement related to 1 or more quali-  
6 fied financial contracts, the contractual rights  
7 of the parties to such qualified financial con-  
8 tracts, netting contracts, security agreements or  
9 arrangements, or other credit enhancements are  
10 enforceable substantially to the same extent as  
11 permitted under this section.

12 “(C) TRANSFER OF CONTRACTS SUBJECT  
13 TO THE RULES OF A CLEARING ORGANIZA-  
14 TION.—In the event that a conservator or re-  
15 ceiver transfers any qualified financial contract  
16 and related claims, property and credit en-  
17 hancements pursuant to subparagraph (A)(i)  
18 and such contract is subject to the rules of a  
19 clearing organization, the clearing organization  
20 shall not be required to accept the transferee as  
21 a member by virtue of the transfer.

22 “(D) DEFINITION.—For purposes of this  
23 section, the term ‘financial institution’ means a  
24 broker or dealer, a depository institution, a fu-  
25 tures commission merchant, or any other insti-

1           tution as determined by the Corporation by reg-  
2           ulation to be a financial institution.”.

3           (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT  
4 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal  
5 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is  
6 amended by amending the flush material following clause  
7 (ii) to read as follows: “the conservator or receiver shall  
8 notify any person who is a party to any such contract of  
9 such transfer by 5:00 p.m. (eastern time) on the business  
10 day following the date of the appointment of the receiver,  
11 in the case of a receivership, or the business day following  
12 such transfer, in the case of a conservatorship.”.

13           (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF  
14 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-  
15 posit Insurance Act (12 U.S.C. 1821(e)(10)) is further  
16 amended—

17           (1) by redesignating subparagraph (B) as sub-  
18           paragraph (D); and

19           (2) by inserting after subparagraph (A) the fol-  
20           lowing new subparagraphs:

21                   “(B) CERTAIN RIGHTS NOT ENFORCE-  
22           ABLE.—

23                           “(i) RECEIVERSHIP.—A person who is  
24                   a party to a qualified financial contract  
25                   with an insured depository institution may

1 not exercise any right such person has to  
2 terminate, liquidate, or net such contract  
3 under paragraph (8)(A) or section 403 or  
4 404 of the Federal Deposit Insurance Cor-  
5 poration Improvement Act of 1991 solely  
6 by reason of or incidental to the appoint-  
7 ment of a receiver for the depository insti-  
8 tution (or the insolvency or financial condi-  
9 tion of the depository institution for which  
10 the receiver has been appointed)—

11 “(I) until 5:00 p.m. (eastern  
12 time) on the business day following  
13 the date of the appointment of the re-  
14 ceiver; or

15 “(II) after the person has re-  
16 ceived notice that the contract has  
17 been transferred pursuant to para-  
18 graph (9)(A).

19 “(ii) CONSERVATORSHIP.—A person  
20 who is a party to a qualified financial con-  
21 tract with an insured depository institution  
22 may not exercise any right such person has  
23 to terminate, liquidate, or net such con-  
24 tract under paragraph (8)(E) or sections  
25 403 or 404 of the Federal Deposit Insur-

1           ance Corporation Improvement Act of  
2           1991, solely by reason of or incidental to  
3           the appointment of a conservator for the  
4           depository institution (or the insolvency or  
5           financial condition of the depository insti-  
6           tution for which the conservator has been  
7           appointed).

8           “(iii) NOTICE.—For purposes of this  
9           subsection, the Corporation as receiver or  
10          conservator of an insured depository insti-  
11          tution shall be deemed to have notified a  
12          person who is a party to a qualified finan-  
13          cial contract with such depository institu-  
14          tion if the Corporation has taken steps  
15          reasonably calculated to provide notice to  
16          such person by the time specified in sub-  
17          paragraph (A) of this subsection.

18          “(C) TREATMENT OF BRIDGE BANKS.—  
19          The following institutions shall not be consid-  
20          ered a financial institution for which a con-  
21          servator, receiver, trustee in bankruptcy, or  
22          other legal custodian has been appointed or  
23          which is otherwise the subject of a bankruptcy  
24          or insolvency proceeding for purposes of sub-  
25          section (e)(9)—

1 “(i) a bridge bank; or

2 “(ii) a depository institution organized  
3 by the Corporation, for which a conserva-  
4 tor is appointed either—

5 “(I) immediately upon the orga-  
6 nization of the institution; or

7 “(II) at the time of a purchase  
8 and assumption transaction between  
9 such institution and the Corporation  
10 as receiver for a depository institution  
11 in default.”.

12 **SEC. 1004. AMENDMENTS RELATING TO DISAFFIRMANCE**  
13 **OR REPUDIATION OF QUALIFIED FINANCIAL**  
14 **CONTRACTS.**

15 Section 11(e) of the Federal Deposit Insurance Act  
16 (12 U.S.C. 1821(e)) is further amended—

17 (1) by redesignating paragraphs (11) through  
18 (15) as paragraphs (12) through (16), respectively;  
19 and

20 (2) by inserting after paragraph (10) the fol-  
21 lowing new paragraph:

22 “(11) DISAFFIRMANCE OR REPUDIATION OF  
23 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
24 the rights of disaffirmance or repudiation of a con-  
25 servator or receiver with respect to any qualified fi-

1       nancial contract to which an insured depository in-  
2       stitution is a party, the conservator or receiver for  
3       such institution shall either—

4               “(A) disaffirm or repudiate all qualified fi-  
5       nancial contracts between—

6               “(i) any person or any affiliate of  
7       such person; and

8               “(ii) the depository institution in de-  
9       fault; or

10              “(B) disaffirm or repudiate none of the  
11       qualified financial contracts referred to in sub-  
12       paragraph (A) (with respect to such person or  
13       any affiliate of such person).”.

14   **SEC. 1005. CLARIFYING AMENDMENT RELATING TO MAS-**  
15       **TER AGREEMENTS.**

16       Section 11(e)(8)(D)(vii) of the Federal Deposit In-  
17       surance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to  
18       read as follows:

19              “(vii)   TREATMENT   OF   MASTER  
20       AGREEMENT AS 1 AGREEMENT.—Any mas-  
21       ter agreement for any contract or agree-  
22       ment described in any preceding clause of  
23       this subparagraph (or any master agree-  
24       ment for such master agreement or agree-  
25       ments), together with all supplements to

1           such master agreement, shall be treated as  
2           a single agreement and a single qualified  
3           financial contract. If a master agreement  
4           contains provisions relating to agreements  
5           or transactions that are not themselves  
6           qualified financial contracts, the master  
7           agreement shall be deemed to be a quali-  
8           fied financial contract only with respect to  
9           those transactions that are themselves  
10          qualified financial contracts.”.

11 **SEC. 1006. FEDERAL DEPOSIT INSURANCE CORPORATION**  
12 **IMPROVEMENT ACT OF 1991.**

13       (a) DEFINITIONS.—Section 402 of the Federal De-  
14 posit Insurance Corporation Improvement Act of 1991 (12  
15 U.S.C. 4402) is amended—

16           (1) in paragraph (6)—

17               (A) by redesignating subparagraphs (B)  
18           through (D) as subparagraphs (C) through (E),  
19           respectively;

20               (B) by inserting after subparagraph (A)  
21           the following new subparagraph:

22               “(B) an uninsured national bank or an un-  
23           insured State bank that is a member of the  
24           Federal Reserve System if the national bank or  
25           State member bank is not eligible to make ap-



1           plication to become an insured bank under sec-  
2           tion 5 of the Federal Deposit Insurance Act;”;  
3           and

4                   (C) by amending subparagraph (C) (as re-  
5           designated) to read as follows:

6                   “(C) a branch or agency of a foreign bank,  
7           a foreign bank and any branch or agency of the  
8           foreign bank, or the foreign bank that estab-  
9           lished the branch or agency, as those terms are  
10          defined in section 1(b) of the International  
11          Banking Act of 1978;”;

12          (2) in paragraph (11), by adding before the pe-  
13          riod “and any other clearing organization with which  
14          such clearing organization has a netting contract”;

15          (3) by amending paragraph (14)(A)(i) to read  
16          as follows:

17                   “(i) means a contract or agreement  
18           between 2 or more financial institutions,  
19           clearing organizations, or members that  
20           provides for netting present or future pay-  
21           ment obligations or payment entitlements  
22           (including liquidation or closeout values re-  
23           lating to such obligations or entitlements)  
24           among the parties to the agreement; and”;  
25           and

1           (4) by adding at the end the following new  
2       paragraph:

3           “(15) PAYMENT.—The term ‘payment’ means a  
4       payment of United States dollars, another currency,  
5       or a composite currency, and a noncash delivery, in-  
6       cluding a payment or delivery to liquidate an  
7       unmatured obligation.”.

8       (b) ENFORCEABILITY OF BILATERAL NETTING CON-  
9       TRACTS.—Section 403 of the Federal Deposit Insurance  
10      Corporation Improvement Act of 1991 (12 U.S.C. 4403)  
11      is amended—

12           (1) by amending subsection (a) to read as fol-  
13      lows:

14           “(a) GENERAL RULE.—Notwithstanding any other  
15      provision of State or Federal law (other than paragraphs  
16      (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
17      Deposit Insurance Act or any order authorized under sec-  
18      tion 5(b)(2) of the Securities Investor Protection Act of  
19      1970, the covered contractual payment obligations and the  
20      covered contractual payment entitlements between any 2  
21      financial institutions shall be netted in accordance with,  
22      and subject to the conditions of, the terms of any applica-  
23      ble netting contract (except as provided in section  
24      561(b)(2) of title 11).”; and

1           (2) by adding at the end the following new sub-  
2       section:

3       “(f) ENFORCEABILITY OF SECURITY AGREE-  
4 MENTS.—The provisions of any security agreement or ar-  
5 rangement or other credit enhancement related to 1 or  
6 more netting contracts between any 2 financial institu-  
7 tions shall be enforceable in accordance with their terms  
8 (except as provided in section 561(b)(2) of title 11) and  
9 shall not be stayed, avoided, or otherwise limited by any  
10 State or Federal law (other than paragraphs (8)(E),  
11 (8)(F), and (10)(B) of section 11(e) of the Federal De-  
12 posit Insurance Act and section 5(b)(2) of the Securities  
13 Investor Protection Act of 1970).”.

14       (c) ENFORCEABILITY OF CLEARING ORGANIZATION  
15 NETTING CONTRACTS.—Section 404 of the Federal De-  
16 posit Insurance Corporation Improvement Act of 1991 (12  
17 U.S.C. 4404) is amended—

18           (1) by amending subsection (a) to read as fol-  
19       lows:

20       “(a) GENERAL RULE.—Notwithstanding any other  
21 provision of State or Federal law (other than paragraphs  
22 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
23 Deposit Insurance Act and any order authorized under  
24 section 5(b)(2) of the Securities Investor Protection Act  
25 of 1970, the covered contractual payment obligations and

1 the covered contractual payment entitlements of a member  
2 of a clearing organization to and from all other members  
3 of a clearing organization shall be netted in accordance  
4 with and subject to the conditions of any applicable net-  
5 ting contract (except as provided in section 561(b)(2) of  
6 title 11, United States Code).”; and

7 (2) by adding at the end the following new sub-  
8 section:

9 “(h) ENFORCEABILITY OF SECURITY AGREE-  
10 MENTS.—The provisions of any security agreement or ar-  
11 rangement or other credit enhancement related to 1 or  
12 more netting contracts between any 2 members of a clear-  
13 ing organization shall be enforceable in accordance with  
14 their terms (except as provided in section 561(b)(2) of  
15 title 11, United States Code) and shall not be stayed,  
16 avoided, or otherwise limited by any State or Federal law  
17 other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-  
18 tion 11(e) of the Federal Deposit Insurance Act and sec-  
19 tion 5(b)(2) of the Securities Investor Protection Act of  
20 1970.”.

21 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-  
22 SURED NATIONAL BANKS AND UNINSURED FEDERAL  
23 BRANCHES AND AGENCIES.—The Federal Deposit Insur-  
24 ance Corporation Improvement Act of 1991 (12 U.S.C.  
25 4401 et seq.) is amended—

1 (1) by redesignating section 407 as section 408;

2 and

3 (2) by adding after section 406 the following

4 new section:

5 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**

6 **NATIONAL BANKS AND UNINSURED FEDERAL**

7 **BRANCHES AND AGENCIES.**

8 “(a) IN GENERAL.—Notwithstanding any other pro-  
9 vision of law, paragraphs (8), (9), (10), and (11) of section  
10 11(e) of the Federal Deposit Insurance Act shall apply  
11 to an uninsured national bank or uninsured Federal  
12 branch or Federal agency except—

13 “(1) any reference to the ‘Corporation as re-  
14 ceiver’ or ‘the receiver or the Corporation’ shall refer  
15 to the receiver of an uninsured national bank or un-  
16 insured Federal branch or Federal agency appointed  
17 by the Comptroller of the Currency;

18 “(2) any reference to the ‘Corporation’ (other  
19 than in section 11(e)(8)(D) of such Act), the ‘Cor-  
20 poration, whether acting as such or as conservator  
21 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer  
22 to the receiver or conservator of an uninsured na-  
23 tional bank or uninsured Federal branch or Federal  
24 agency appointed by the Comptroller of the Cur-  
25 rency; and

1           “(3) any reference to an ‘insured depository in-  
2           stitution’ or ‘depository institution’ shall refer to an  
3           uninsured national bank or an uninsured Federal  
4           branch or Federal agency.

5           “(b) LIABILITY.—The liability of a receiver or con-  
6           servator of an uninsured national bank or uninsured Fed-  
7           eral branch or agency shall be determined in the same  
8           manner and subject to the same limitations that apply to  
9           receivers and conservators of insured depository institu-  
10          tions under section 11(e) of the Federal Deposit Insurance  
11          Act.

12          “(c) REGULATORY AUTHORITY.—

13                 “(1) IN GENERAL.—The Comptroller of the  
14                 Currency, in consultation with the Federal Deposit  
15                 Insurance Corporation, may promulgate regulations  
16                 to implement this section.

17                 “(2) SPECIFIC REQUIREMENT.—In promulgat-  
18                 ing regulations to implement this section, the Comp-  
19                 troller of the Currency shall ensure that the regula-  
20                 tions generally are consistent with the regulations  
21                 and policies of the Federal Deposit Insurance Cor-  
22                 poration adopted pursuant to the Federal Deposit  
23                 Insurance Act.

24                 “(d) DEFINITIONS.—For purposes of this section, the  
25                 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign

1 bank' have the same meaning as in section 1(b) of the  
2 International Banking Act.”.

3 **SEC. 1007. BANKRUPTCY CODE AMENDMENTS.**

4 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-  
5 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,  
6 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-  
7 RITIES CONTRACT.—Title 11, United States Code, is  
8 amended—

9 (1) in section 101—

10 (A) in paragraph (25)—

11 (i) by striking “means a contract”

12 and inserting “means—

13 “(A) a contract”;

14 (ii) by striking “, or any combination

15 thereof or option thereon;” and inserting

16 “, or any other similar agreement;”; and

17 (iii) by adding at the end the follow-

18 ing:

19 “(B) any combination of agreements or

20 transactions referred to in subparagraphs (A)

21 and (C);

22 “(C) any option to enter into an agreement

23 or transaction referred to in subparagraph (A)

24 or (B);

1           “(D) a master agreement that provides for  
2           an agreement or transaction referred to in sub-  
3           paragraph (A), (B), or (C), together with all  
4           supplements to any such master agreement,  
5           without regard to whether such master agree-  
6           ment provides for an agreement or transaction  
7           that is not a forward contract under this para-  
8           graph, except that such master agreement shall  
9           be considered to be a forward contract under  
10          this paragraph only with respect to each agree-  
11          ment or transaction under such master agree-  
12          ment that is referred to in subparagraph (A),  
13          (B) or (C); or

14          “(E) a security agreement or arrangement,  
15          or other credit enhancement related to any  
16          agreement or transaction referred to in sub-  
17          paragraph (A), (B), (C), or (D), but not to ex-  
18          ceed the actual value of such contract, option,  
19          agreement, or transaction on the date of the fil-  
20          ing of the petition;”;

21          (B) in paragraph (46), by striking “on any  
22          day during the period beginning 90 days before  
23          the date of” and replacing it with “at any time  
24          before”;



1 (C) by amending paragraph (47) to read  
2 as follows:

3 “(47) ‘repurchase agreement’ (which definition  
4 also applies to a reverse repurchase agreement)  
5 means—

6 “(i) an agreement, including related  
7 terms, which provides for the transfer of 1  
8 or more certificates of deposit, mortgage-  
9 related securities (as defined in the Securi-  
10 ties Exchange Act of 1934), mortgage  
11 loans, interests in mortgage-related securi-  
12 ties or mortgage loans, eligible bankers’ ac-  
13 ceptances, qualified foreign government se-  
14 curities; or securities that are direct obliga-  
15 tions of, or that are fully guaranteed by,  
16 the United States or any agency of the  
17 United States against the transfer of funds  
18 by the transferee of such certificates of de-  
19 posit, eligible bankers’ acceptances, securi-  
20 ties, loans, or interests; with a simulta-  
21 neous agreement by such transferee to  
22 transfer to the transferor thereof certifi-  
23 cates of deposit, eligible bankers’ accept-  
24 ance, securities, loans, or interests of the  
25 kind described above, at a date certain not

1 later than 1 year after such transfer or on  
2 demand, against the transfer of funds;

3 “(ii) any combination of agreements  
4 or transactions referred to in clauses (i)  
5 and (iii);

6 “(iii) an option to enter into an agree-  
7 ment or transaction referred to in clause  
8 (i) or (ii);

9 “(iv) a master agreement that pro-  
10 vides for an agreement or transaction re-  
11 ferred to in clause (i), (ii), or (iii), together  
12 with all supplements to any such master  
13 agreement, without regard to whether such  
14 master agreement provides for an agree-  
15 ment or transaction that is not a repur-  
16 chase agreement under this paragraph, ex-  
17 cept that such master agreement shall be  
18 considered to be a repurchase agreement  
19 under this paragraph only with respect to  
20 each agreement or transaction under the  
21 master agreement that is referred to in  
22 clause (i), (ii), or (iii); or

23 “(v) a security agreement or arrange-  
24 ment or other credit enhancement related  
25 to any agreement or transaction referred

1 to in clause (i), (ii), (iii), or (iv), but not  
2 to exceed the actual value of such contract  
3 on the date of the filing of the petition;  
4 and

5 “(B) does not include a repurchase obliga-  
6 tion under a participation in a commercial  
7 mortgage loan;  
8 and, for purposes of this paragraph, the term ‘quali-  
9 fied foreign government security’ means a security  
10 that is a direct obligation of, or that is fully guaran-  
11 teed by, the central government of a member of the  
12 Organization for Economic Cooperation and Devel-  
13 opment;”;

14 (D) in paragraph (48) by inserting “or ex-  
15 empt from such registration under such section  
16 pursuant to an order of the Securities and Ex-  
17 change Commission” after “1934”; and

18 (E) by amending paragraph (53B) to read  
19 as follows:

20 “(53B) ‘swap agreement’

21 “(A) means—

22 “(i) any agreement, including the  
23 terms and conditions incorporated by ref-  
24 erence in such agreement, which is an in-  
25 terest rate swap, option, future, or forward

1 agreement, including a rate floor, rate cap,  
2 rate collar, cross-currency rate swap, and  
3 basis swap; a spot, same day-tomorrow, to-  
4 morrow-next, forward, or other foreign ex-  
5 change or precious metals agreement; a  
6 currency swap, option, future, or forward  
7 agreement; an equity index or an equity  
8 swap, option, future, or forward agree-  
9 ment; a debt index or a debt swap, option,  
10 future, or forward agreement; a credit  
11 spread or a credit swap, option, future, or  
12 forward agreement; or a commodity index  
13 or a commodity swap, option, future, or  
14 forward agreement;

15 “(ii) any agreement or transaction  
16 similar to any other agreement or trans-  
17 action referred to in this paragraph that—

18 “(I) is presently, or in the future  
19 becomes, regularly entered into in the  
20 swap market (including terms and  
21 conditions incorporated by reference  
22 therein); and

23 “(II) is a forward, swap, future,  
24 or option on 1 or more rates, cur-  
25 rencies commodities, equity securities,

1                   or other equity instruments, debt se-  
2                   curities or other debt instruments, or  
3                   on an economic index or measure of  
4                   economic risk or value;

5                   “(iii) any combination of agreements  
6                   or transactions referred to in this para-  
7                   graph;

8                   “(iv) any option to enter into an  
9                   agreement or transaction referred to in  
10                  this paragraph;

11                  “(v) a master agreement that provides  
12                  for an agreement or transaction referred to  
13                  in clause (i), (ii), (iii), or (iv), together  
14                  with all supplements to any such master  
15                  agreement, and without regard to whether  
16                  the master agreement contains an agree-  
17                  ment or transaction that is not a swap  
18                  agreement under this paragraph, except  
19                  that the master agreement shall be consid-  
20                  ered to be a swap agreement under this  
21                  paragraph only with respect to each agree-  
22                  ment or transaction under the master  
23                  agreement that is referred to in clause (i),  
24                  (ii), (iii), or (iv); or

1           “(B) any security agreement or arrange-  
2           ment or other credit enhancement related to  
3           any agreements or transactions referred to in  
4           subparagraph (A); and

5           “(C) is applicable for purposes of this title  
6           only and shall not be construed or applied so as  
7           to challenge or affect the characterization, defi-  
8           nition, or treatment of any swap agreement  
9           under any other statute, regulation, or rule, in-  
10          cluding the Securities Act of 1933, the Securi-  
11          ties Exchange Act of 1934, the Public Utility  
12          Holding Company Act of 1935, the Trust In-  
13          denture Act of 1939, the Investment Company  
14          Act of 1940, the Investment Advisers Act of  
15          1940, the Securities Investor Protection Act of  
16          1970, the Commodity Exchange Act, and the  
17          regulations prescribed by the Securities and Ex-  
18          change Commission or the Commodity Futures  
19          Trading Commission.”;

20          (2) by amending section 741(7) to read as fol-  
21          lows:

22               “(7) ‘securities contract’—

23                   “(A) means—

24                           “(i) a contract for the purchase, sale,  
25                           or loan of a security, a certificate of de-

1           posit, a mortgage loan or any interest in a  
2           mortgage loan, a group or index of securi-  
3           ties, certificates of deposit or mortgage  
4           loans or interests therein (including an in-  
5           terest therein or based on the value there-  
6           of), or option on any of the foregoing, in-  
7           cluding an option to purchase or sell any  
8           such security certificate of deposit, loan,  
9           interest, group or index or option;

10           “(ii) any option entered into on a na-  
11           tional securities exchange relating to for-  
12           eign currencies;

13           “(iii) the guarantee by or to any secu-  
14           rities clearing agency of a settlement of  
15           cash, securities, certificates of deposit  
16           mortgage loans or interests therein, group  
17           or index of securities, or mortgage loans or  
18           interests therein (including any interest  
19           therein or based on the value thereof), or  
20           option on any of the foregoing, including  
21           an option to purchase or sell any such se-  
22           curity certificate of deposit, loan, interest,  
23           group or index or option;

24           “(iv) any margin loan;

1           “(v) any other agreement or trans-  
2           action that is similar to an agreement or  
3           transaction referred to in this paragraph;

4           “(vi) any combination of the agree-  
5           ments or transactions referred to in this  
6           paragraph;

7           “(vii) any option to enter into any  
8           agreement or transaction referred to in  
9           this paragraph;

10          “(viii) a master agreement that pro-  
11          vides for an agreement or transaction re-  
12          ferred to in clause (i), (ii), (iii), (iv), (v),  
13          (vi), or (vii), together with all supplements  
14          to any such master agreement, without re-  
15          gard to whether the master agreement pro-  
16          vides for an agreement or transaction that  
17          is not a securities contract under this  
18          paragraph, except that such master agree-  
19          ment shall be considered to be a securities  
20          contract under this paragraph only with  
21          respect to each agreement or transaction  
22          under such master agreement that is re-  
23          ferred to in clause (i), (ii), (iii), (iv), (v),  
24          (vi), or (vii); or



1           “(ix) any security agreement or ar-  
2           rangement, or other credit enhancement,  
3           related to any agreement or transaction re-  
4           ferred to in this paragraph, but not to ex-  
5           ceed the actual value of such contract on  
6           the date of the filing of the petition; and

7           “(B) does not include any purchase, sale,  
8           or repurchase obligation under a participation  
9           in a commercial mortgage loan.”; and  
10          (3) in section 761(4)—

11           (A) by striking “or” at the end of subpara-  
12          graph (D); and

13           (B) by adding at the end the following:

14           “(F) any other agreement or transaction  
15          that is similar to an agreement or transaction  
16          referred to in this paragraph;

17           “(G) any combination of the agreements or  
18          transactions referred to in this paragraph;

19           “(H) any option to enter into an agree-  
20          ment or transaction referred to in this para-  
21          graph;

22           “(I) a master agreement that provides for  
23          an agreement or transaction referred to in sub-  
24          paragraph (A), (B), (C), (D), (E), (F), (G), or  
25          (H), together with all supplements to such mas-

1           ter netting agreement, without regard to wheth-  
2           er the master netting agreement provides for an  
3           agreement or transaction that is not a commod-  
4           ity contract under this paragraph, except that  
5           the master agreement shall be considered to be  
6           a commodity contract under this paragraph  
7           only with respect to each agreement or trans-  
8           action under the master agreement that is re-  
9           ferred to in subparagraph (A), (B), (C), (D),  
10          (E), (F), (G), or (H); or

11                 “(J) a security agreement or arrangement,  
12           or other credit enhancement related to any  
13           agreement or transaction referred to in this  
14           paragraph, but not to exceed the actual value of  
15           such contract on the date of the filing of the pe-  
16           tition;”.

17          (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-  
18          NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-  
19          CHANT.—Section 101 of title 11, United States Code, is  
20          amended—

21                 (1) by amending paragraph (22) to read as fol-  
22          lows:

23                 “(22) ‘financial institution’ means—

24                         “(A) a Federal reserve bank, or an entity  
25                         (domestic or foreign) that is a commercial or

1 savings bank, industrial savings bank, savings  
2 and loan association, trust company, or receiver  
3 or conservator for such entity and, when any  
4 such Federal reserve bank, receiver, conservator  
5 or entity is acting as agent or custodian for a  
6 customer in connection with a securities con-  
7 tract, as defined in section 741 of this title,  
8 such customer; or

9 “(B) in connection with a securities con-  
10 tract, as defined in section 741 of this title, an  
11 investment company registered under the In-  
12 vestment Company Act of 1940;”;

13 (2) by inserting after paragraph (22) the fol-  
14 lowing:

15 “(22A) ‘financial participant’ means an entity  
16 that, at the time it enters into a securities contract,  
17 commodity contract or forward contract, or at the  
18 time of the filing of the petition, has 1 or more  
19 agreements or transactions that is described in sec-  
20 tion 561(a)(2) with the debtor or any other entity  
21 (other than an affiliate) of a total gross dollar value  
22 of at least \$1,000,000,000 in notional or actual  
23 principal amount outstanding on any day during the  
24 previous 15-month period, or has gross mark-to-  
25 market positions of at least \$100,000,000 (aggre-

1 gated across counterparties) in 1 or more such  
2 agreement or transaction with the debtor or any  
3 other entity (other than an affiliate) on any day dur-  
4 ing the previous 15-month period;” and

5 (3) by amending paragraph (26) to read as fol-  
6 lows:

7 “(26) ‘forward contract merchant’ means a  
8 Federal reserve bank, or an entity whose business  
9 consists in whole or in part of entering into forward  
10 contracts as or with merchants or in a commodity,  
11 as defined or in section 761 of this title, or any simi-  
12 lar good, article, service, right, or interest which is  
13 presently or in the future becomes the subject of  
14 dealing or in the forward contract trade;”.

15 (c) DEFINITION OF MASTER NETTING AGREEMENT  
16 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-  
17 tion 101 of title 11, United States Code, is amended by  
18 inserting after paragraph (38) the following new para-  
19 graphs:

20 “(38A) ‘master netting agreement’ means an  
21 agreement providing for the exercise of rights, in-  
22 cluding rights of netting, setoff, liquidation, termi-  
23 nation, acceleration, or closeout, under or in connec-  
24 tion with 1 or more contracts that are described in  
25 any 1 or more of paragraphs (1) through (5) of sec-

1       tion 561(a), or any security agreement or arrange-  
2       ment or other credit enhancement related to 1 or  
3       more of the foregoing. If a master netting agreement  
4       contains provisions relating to agreements or trans-  
5       actions that are not contracts described in para-  
6       graphs (1) through (5) of section 561(a), the master  
7       netting agreement shall be deemed to be a master  
8       netting agreement only with respect to those agree-  
9       ments or transactions that are described in any 1 or  
10      more of the paragraphs (1) through (5) of section  
11      561(a);

12           “(38B) ‘master netting agreement participant’  
13      means an entity that, at any time before the filing  
14      of the petition, is a party to an outstanding master  
15      netting agreement with the debtor;”.

16      (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
17      COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
18      CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
19      MENTS UNDER THE AUTOMATIC-STAY.—

20           (1) IN GENERAL.—Section 362(b) of title 11,  
21      United States Code, as amended by sections 118,  
22      132, 136, 142, 203 and 818, is amended—

23           (A) in paragraph (6), by inserting “,  
24      pledged to, and under the control of,” after  
25      “held by”;

1 (B) in paragraph (7), by inserting “,  
2 pledged to, and under the control of,” after  
3 “held by”;

4 (C) by amending paragraph (17) to read  
5 as follows:

6 “(17) under subsection (a), of the setoff by a  
7 swap participant of a mutual debt and claim under  
8 or in connection with 1 or more swap agreements  
9 that constitutes the setoff of a claim against the  
10 debtor for any payment or other transfer of property  
11 due from the debtor under or in connection with any  
12 swap agreement against any payment due to the  
13 debtor from the swap participant under or in con-  
14 nection with any swap agreement or against cash,  
15 securities, or other property held by, pledged to, and  
16 under the control of, or due from such swap partici-  
17 pant to margin guarantee, secure, or settle a swap  
18 agreement;”;

19 (D) in paragraph (30) by striking “or” at  
20 the end;

21 (E) in paragraph (31) by striking the pe-  
22 riod at the end and inserting “; or”; and

23 (F) by inserting after paragraph (31) the  
24 following new paragraph:

1           “(32) under subsection (a), of the setoff by a  
2       master netting agreement participant of a mutual  
3       debt and claim under or in connection with 1 or  
4       more master netting agreements or any contract or  
5       agreement subject to such agreements that con-  
6       stitutes the setoff of a claim against the debtor for  
7       any payment or other transfer of property due from  
8       the debtor under or in connection with such agree-  
9       ments or any contract or agreement subject to such  
10      agreements against any payment due to the debtor  
11      from such master netting agreement participant  
12      under or in connection with such agreements or any  
13      contract or agreement subject to such agreements or  
14      against cash, securities, or other property held by,  
15      pledged or and under the control of, or due from  
16      such master netting agreement participant to mar-  
17      gin, guarantee, secure, or settle such agreements or  
18      any contract or agreement subject to such agree-  
19      ments, to the extent such participant is eligible to  
20      exercise such offset rights under paragraph (6), (7),  
21      or (17) for each individual contract covered by the  
22      master netting agreement in issue.”.

23           (2) LIMITATION.—Section 362 of title 11,  
24      United States Code, as amended by sections 120,

1       302, and 412, is amended by adding at the end the  
2       following:

3       “(l) LIMITATION.—The exercise of rights not subject  
4       to the stay arising under subsection (a) pursuant to para-  
5       graph (6), (7), or (17), or (31) of subsection (b) shall not  
6       be stayed by any order of a court or administrative agency  
7       in any proceeding under this title.”.

8       (e) LIMITATION OF AVOIDANCE POWERS UNDER  
9       MASTER NETTING AGREEMENT.—Section 546 of title 11,  
10      United States Code, as amended by sections 207 and 302,  
11      is amended—

12               (1) in subsection (g) (as added by section 103  
13      of Public Law 101–311)—

14                       (A) by striking “under a swap agreement”;

15                       (B) by striking “in connection with a swap  
16      agreement” and inserting “under or in connec-  
17      tion with any swap agreement”; and

18               (2) by adding at the end the following:

19      “(j) Notwithstanding sections 544, 545, 547,  
20      548(a)(2)(B), and 548(b) of this title, the trustee may not  
21      avoid a transfer made by or to a master netting agreement  
22      participant under or in connection with any master netting  
23      agreement or any individual contract covered thereby that  
24      is made before the commencement of the case, except  
25      under section 548(a)(1)(A) of this title, and except to the



1 extent the trustee could otherwise avoid such a transfer  
2 made under an individual contract covered by such master  
3 netting agreement.”.

4 (f) FRAUDULENT TRANSFERS OF MASTER NETTING  
5 AGREEMENTS.—Section 548(d)(2) of title 11, United  
6 States Code, is amended—

7 (1) in subparagraph (C), by striking “and”;

8 (2) in subparagraph (D), by striking the period  
9 and inserting “; and”; and

10 (3) by adding at the end the following new sub-  
11 paragraph:

12 “(E) a master netting agreement participant  
13 that receives a transfer in connection with a master  
14 netting agreement or any individual contract covered  
15 thereby takes for value to the extent of such trans-  
16 fer, except, with respect to a transfer under any in-  
17 dividual contract covered thereby, to the extent such  
18 master netting agreement participant otherwise did  
19 not take (or is otherwise not deemed to have taken)  
20 such transfer for value.”.

21 (g) TERMINATION OR ACCELERATION OF SECURITIES  
22 CONTRACTS.—Section 555 of title 11, United States Code,  
23 is amended—

24 (1) by amending the section heading to read as  
25 follows:

1   **“§ 555. Contractual right to liquidate, terminate, or**  
2                   **accelerate a securities contract”; and**

3           (2) in the first sentence, by striking “liquida-  
4           tion” and inserting “liquidation, termination, or ac-  
5           celeration”.

6           (h) TERMINATION OR ACCELERATION OF COMMOD-  
7           ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,  
8           United States Code, is amended—

9           (1) by amending the section heading to read as  
10          follows:

11   **“§ 556. Contractual right to liquidate, terminate, or**  
12                   **accelerate a commodities contract or for-**  
13                   **ward contract”; and**

14           (2) in the first sentence, by striking “liquida-  
15           tion” and inserting “liquidation, termination, or ac-  
16           celeration”.

17           (i) TERMINATION OR ACCELERATION OF REPUR-  
18           CHASE AGREEMENTS.—Section 559 of title 11, United  
19           States Code, is amended—

20           (1) by amending the section heading to read as  
21          follows:

22   **“§ 559. Contractual right to liquidate, terminate, or**  
23                   **accelerate a repurchase agreement”; and**

24           (2) in the first sentence, by striking “liquida-  
25           tion” and inserting “liquidation, termination, or ac-  
26           celeration”.

1 (j) LIQUIDATION, TERMINATION, OR ACCELERATION  
2 OF SWAP AGREEMENTS.—Section 560 of title 11, United  
3 States Code, is amended—

4 (1) by amending the section heading to read as  
5 follows:

6 **“§ 560. Contractual right to liquidate, terminate, or**  
7 **accelerate a swap agreement”; and**

8 (2) in the first sentence, by striking “termi-  
9 nation of a swap agreement” and inserting “liquida-  
10 tion, termination, or acceleration of 1 or more swap  
11 agreements”; and

12 (3) by striking “in connection with any swap  
13 agreement” and inserting “in connection with the  
14 termination, liquidation, or acceleration of 1 or more  
15 swap agreements”.

16 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR  
17 OFFSET UNDER A MASTER NETTING AGREEMENT AND  
18 ACROSS CONTRACTS.—(1) Title 11, United States Code,  
19 is amended by inserting after section 560 the following:

20 **“§ 561. Contractual right to terminate, liquidate, ac-**  
21 **celerate, or offset under a master netting**  
22 **agreement and across contracts**

23 “(a) IN GENERAL.—Subject to subsection (b), the ex-  
24 ercise of any contractual right, because of a condition of  
25 the kind specified in section 365(e)(1), to cause the termi-

1 nation, liquidation, or acceleration of or to offset or net  
2 termination values, payment amounts or other transfer ob-  
3 ligations arising under or in connection with 1 or more  
4 (or the termination, liquidation, or acceleration of 1 or  
5 more)—

6 “(1) securities contracts, as defined in section  
7 741(7);

8 “(2) commodity contracts, as defined in section  
9 761(4);

10 “(3) forward contracts;

11 “(4) repurchase agreements;

12 “(5) swap agreements; or

13 “(6) master netting agreements,

14 shall not be stayed, avoided, or otherwise limited by oper-  
15 ation of any provision of this title or by any order of a  
16 court or administrative agency in any proceeding under  
17 this title.

18 “(b) EXCEPTION.—

19 “(1) A party may exercise a contractual right  
20 described in subsection (a) to terminate, liquidate, or  
21 accelerate only to the extent that such party could  
22 exercise such a right under section 555, 556, 559,  
23 or 560 for each individual contract covered by the  
24 master netting agreement in issue.

1           “(2) If a debtor is a commodity broker subject  
2           to subchapter IV of chapter 7 of this title—

3                   “(A) a party may not net or offset an obli-  
4                   gation to the debtor arising under, or in con-  
5                   nection with, a commodity contract against any  
6                   claim arising under, or in connection with,  
7                   other instruments, contracts, or agreements  
8                   listed in subsection (a) except to the extent the  
9                   party has positive net equity in the commodity  
10                  accounts at the debtor, as calculated under sub-  
11                  chapter IV; and

12                   “(B) another commodity broker may not  
13                   net or offset an obligation to the debtor arising  
14                   under, or in connection with, a commodity con-  
15                   tract entered into or held on behalf of a cus-  
16                   tomer of the debtor against any claim arising  
17                   under, or in connection with, other instruments,  
18                   contracts, or agreements listed in subsection  
19                  (a).

20           “(c) DEFINITION.—As used in this section, the term  
21           ‘contractual right’ includes a right set forth in a rule or  
22           bylaw of a national securities exchange, a national securi-  
23           ties association, or a securities clearing agency, a right  
24           set forth in a bylaw of a clearing organization or contract  
25           market or in a resolution of the governing board thereof,

1 and a right, whether or not evidenced in writing, arising  
2 under common law, under law merchant, or by reason of  
3 normal business practice.”.

4 (2) CONFORMING AMENDMENT.—The table of sec-  
5 tions of chapter 9 of title 11, United States Code, is  
6 amended by inserting after the item relating to section  
7 560 the following:

“561. Contractual right to terminate, liquidate, accelerate, or offset under a  
master netting agreement and across contracts.

8 (l) ANCILLARY PROCEEDINGS.—Section 304 of title  
9 11, United States Code, as amended by section 215, is  
10 amended by adding at the end the following:

11 “(c) Any provisions of this title relating to securities  
12 contracts, commodity contracts, forward contracts, repur-  
13 chase agreements, swap agreements, or master netting  
14 agreements shall apply in a case ancillary to a foreign pro-  
15 ceeding under this section or any other section of this title,  
16 so that enforcement of contractual provisions of such con-  
17 tracts and agreements in accordance with their terms will  
18 not be stayed or otherwise limited by operation of any pro-  
19 vision of this title or by order of a court in any case under  
20 this title, and to limit avoidance powers to the same extent  
21 as in a proceeding under chapter 7 or 11 of this title (such  
22 enforcement not to be limited based on the presence or  
23 absence of assets of the debtor in the United States).”.

1 (m) COMMODITY BROKER LIQUIDATIONS.—Title 11,  
2 United States Code, is amended by inserting after section  
3 766 the following:

4 **“§ 767. Commodity broker liquidation and forward**  
5 **contract merchants, commodity brokers,**  
6 **stockbrokers, financial institutions, secu-**  
7 **rities clearing agencies, swap partici-**  
8 **pants, repo participants, and master net-**  
9 **ting agreement participants**

10 “Notwithstanding any other provision of this title,  
11 the exercise of rights by a forward contract merchant,  
12 commodity broker, stockbroker, financial institution, secu-  
13 rities clearing agency, swap participant, repo participant,  
14 or master netting agreement participant under this title  
15 shall not affect the priority of any unsecured claim it may  
16 have after the exercise of such rights.”.

17 (n) STOCKBROKER LIQUIDATIONS.—Title 11, United  
18 States Code, is amended by inserting after section 752 the  
19 following:

1   **“§ 753. Stockbroker liquidation and forward contract**  
2                   **merchants, commodity brokers, stock-**  
3                   **brokers, financial institutions, securities**  
4                   **clearing agencies, swap participants,**  
5                   **repo participants, and master netting**  
6                   **agreement participants**

7           “Notwithstanding any other provision of this title,  
8 the exercise of rights by a forward contract merchant,  
9 commodity broker, stockbroker, financial institution, secu-  
10 rities clearing agency, swap participant, repo participant,  
11 financial participant, or master netting agreement partici-  
12 pant under this title shall not affect the priority of any  
13 unsecured claim it may have after the exercise of such  
14 rights.”.

15           (o) SETOFF.—Section 553 of title 11, United States  
16 Code, is amended—

17               (1) in subsection (a)(3)(C), by inserting “(ex-  
18 cept for a setoff of a kind described in section  
19 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(19), 555,  
20 556, 559, 560 or 561 of this title)” before the pe-  
21 riod; and

22               (2) in subsection (b)(1), by striking  
23 “362(b)(14),” and inserting “362(b)(17),  
24 362(b)(19), 555, 556, 559, 560, 561”.



1       (p) SECURITIES CONTRACTS, COMMODITY CON-  
2 TRACTS, AND FORWARD CONTRACTS.—Title 11, United  
3 States Code, is amended—

4           (1) in section 362(b)(6), by striking “financial  
5 institutions,” each place such term appears and in-  
6 serting “financial institution, financial participant”;

7           (2) in section 546(e), by inserting “financial  
8 participant,” after “financial institution,”;

9           (3) in section 548(d)(2)(B), by inserting “fi-  
10 nancial participant,” after “financial institution,”;

11          (4) in section 555—

12           (A) by inserting “financial participant,”  
13 after “financial institution,”; and

14           (B) by inserting before the period at the  
15 end “, a right set forth in a bylaw of a clearing  
16 organization or contract market or in a resolu-  
17 tion of the governing board thereof, and a right,  
18 whether or not in writing, arising under com-  
19 mon law, under law merchant, or by reason of  
20 normal business practice”; and

21          (5) in section 556, by inserting “, financial par-  
22 ticipant” after “commodity broker”.

23       (q) CONFORMING AMENDMENTS.—Title 11 of the  
24 United States Code is amended—

25          (1) in the table of sections of chapter 5—

1 (A) by amending the items relating to sec-  
2 tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-  
tract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-  
tract or forward contract.”; and

3 (B) by amending the items relating to sec-  
4 tions 559 and 560 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase  
agreement.

“560. Contractual right to liquidate, terminate, or accelerate a swap agree-  
ment.”; and

5 (2) in the table of sections of chapter 7—

6 (A) by inserting after the item relating to  
7 section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, commod-  
ity brokers, stockbrokers, financial institutions, securities clear-  
ing agencies, swap participants, repo participants, and master  
netting agreement participants.”; and

8 (B) by inserting after the item relating to  
9 section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity bro-  
kers, stockbrokers, financial institutions, securities clearing  
agencies, swap participants, repo participants, and master net-  
ting agreement participants.”.

10 **SEC. 1008. RECORDKEEPING REQUIREMENTS.**

11 Section 11(e)(8) of the Federal Deposit Insurance  
12 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the  
13 end the following new subparagraph:

14 “(H) RECORDKEEPING REQUIREMENTS.—

15 The Corporation, in consultation with the ap-

1           appropriate Federal banking agencies, may pre-  
2           scribe regulations requiring more detailed rec-  
3           ordkeeping with respect to qualified financial  
4           contracts (including market valuations) by in-  
5           sured depository institutions.”.

6   **SEC. 1009. EXEMPTIONS FROM CONTEMPORANEOUS EXE-**  
7                           **CUTION REQUIREMENT.**

8           Section 13(e)(2) of the Federal Deposit Insurance  
9   Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

10           “(2) EXEMPTIONS FROM CONTEMPORANEOUS  
11   EXECUTION REQUIREMENT.—An agreement to pro-  
12   vide for the lawful collateralization of—

13                   “(A) deposits of, or other credit extension  
14           by, a Federal, State, or local governmental en-  
15           tity, or of any depositor referred to in section  
16           11(a)(2), including an agreement to provide col-  
17           lateral in lieu of a surety bond;

18                   “(B) bankruptcy estate funds pursuant to  
19           section 345(b)(2) of title 11, United States  
20           Code;

21                   “(C) extensions of credit, including any  
22           overdraft, from a Federal reserve bank or Fed-  
23           eral home loan bank; or

24                   “(D) 1 or more qualified financial con-  
25           tracts, as defined in section 11(e)(8)(D),

1       shall not be deemed invalid pursuant to paragraph  
2       (1)(B) solely because such agreement was not exe-  
3       cuted contemporaneously with the acquisition of the  
4       collateral or because of pledges, delivery, or substi-  
5       tution of the collateral made in accordance with such  
6       agreement.”.

7       **SEC. 1010. DAMAGE MEASURE.**

8       (a) Title 11, United States Code, as amended by sec-  
9       tion 1007, is amended—

10               (1) by inserting after section 561 the following:

11       **“§ 562. Damage measure in connection with swap**  
12               **agreements, securities contracts, forward**  
13               **contracts, commodity contracts, repur-**  
14               **chase agreements, or master netting**  
15               **agreements**

16       “If the trustee rejects a swap agreement, securities  
17       contract as defined in section 741 of this title, forward  
18       contract, commodity contract (as defined in section 761  
19       of this title) repurchase agreement, or master netting  
20       agreement pursuant to section 365(a) of this title, or if  
21       a forward contract merchant, stockbroker, financial insti-  
22       tution, securities clearing agency, repo participant, finan-  
23       cial participant, master netting agreement participant, or  
24       swap participant liquidates, terminates, or accelerates

1 such contract or agreement, damages shall be measured  
2 as of the earlier of—

3 “(1) the date of such rejection; or

4 “(2) the date of such liquidation, termination,  
5 or acceleration.”; and

6 (2) in the table of sections of chapter 5 by in-  
7 serting after the item relating to section 561 the fol-  
8 lowing:

“562. Damage measure in connection with swap agreements, securities con-  
tracts, forward contracts, commodity contracts, repurchase  
agreements, or master netting agreements.”.

9 (b) CLAIMS ARISING FROM REJECTION.—Section  
10 502(g) of title 11, United States Code, is amended—

11 (1) by designating the existing text as para-  
12 graph (1); and

13 (2) by adding at the end the following:

14 “(2) A claim for damages calculated in accordance  
15 with section 561 of this title shall be allowed under sub-  
16 section (a), (b), or (c), or disallowed under subsection (d)  
17 or (e), as if such claim had arisen before the date of the  
18 filing of the petition.”.

19 **SEC. 1011. SIPC STAY.**

20 Section 5(b)(2) of the Securities Investor Protection  
21 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding  
22 after subparagraph (B) the following new subparagraph:

23 “(C) EXCEPTION FROM STAY.—

1                   “(i) Notwithstanding section 362 of  
2                   title 11, United States Code, neither the  
3                   filing of an application under subsection  
4                   (a)(3) nor any order or decree obtained by  
5                   Securities Investor Protection Corporation  
6                   from the court shall operate as a stay of  
7                   any contractual rights of a creditor to liq-  
8                   uidate, terminate, or accelerate a securities  
9                   contract, commodity contract, forward con-  
10                  tract, repurchase agreement, swap agree-  
11                  ment, or master netting agreement, each  
12                  as defined in title 11, to offset or net ter-  
13                  mination values, payment amounts, or  
14                  other transfer obligations arising under or  
15                  in connection with 1 or more of such con-  
16                  tracts or agreements, or to foreclose on  
17                  any cash collateral pledged by the debtor  
18                  whether or not with respect to 1 or more  
19                  of such contracts or agreements.

20                  “(ii) Notwithstanding clause (i), such  
21                  application, order, or decree may operate  
22                  as a stay of the foreclosure on securities  
23                  collateral pledged by the debtor, whether  
24                  or not with respect to 1 or more of such  
25                  contracts or agreements, securities sold by

1 the debtor under a repurchase agreement  
2 or securities lent under a securities lending  
3 agreement.

4 “(iii) As used in this section, the term  
5 ‘contractual right’ includes a right set  
6 forth in a rule or bylaw of a national secu-  
7 rities exchange, a national securities asso-  
8 ciation, or a securities clearing agency, a  
9 right set forth in a bylaw of a clearing or-  
10 ganization or contract market or in a reso-  
11 lution of the governing board thereof, and  
12 a right, whether or not in writing, arising  
13 under common law, under law merchant,  
14 or by reason of normal business practice.”.

15 **SEC. 1012. ASSET-BACKED SECURITIZATIONS.**

16 Section 541 of title 11, United States Code, as  
17 amended by section 150, is amended—

18 (1) by redesignating paragraph (5) of sub-  
19 section (b) as paragraph (6);

20 (2) by inserting after paragraph (4) of sub-  
21 section (b) the following new paragraph:

22 “(5) any eligible asset (or proceeds thereof), to  
23 the extent that such eligible asset was transferred by  
24 the debtor, before the date of commencement of the  
25 case, to an eligible entity in connection with an

1       asset-backed securitization, except to the extent such  
2       asset (or proceeds or value thereof) may be recov-  
3       ered by the trustee under section 550 by virtue of  
4       avoidance under section 548(a);” and

5               (3) by adding at the end the following new sub-  
6       section:

7       “(e) For purposes of this section, the following defini-  
8       tions shall apply:

9               “(1) the term ‘asset-backed securitization’  
10       means a transaction in which eligible assets trans-  
11       ferred to an eligible entity are used as the source of  
12       payment on securities, the most senior of which are  
13       rated investment grade by 1 or more nationally rec-  
14       ognized securities rating organizations, issued by an  
15       issuer;

16              “(2) the term ‘eligible asset’ means—

17                      “(A) financial assets (including interests  
18                      therein and proceeds thereof), either fixed or re-  
19                      volving, including residential and commercial  
20                      mortgage loans, consumer receivables, trade re-  
21                      ceivables, and lease receivables, that, by their  
22                      terms, convert into cash within a finite time pe-  
23                      riod, plus any residual interest in property sub-  
24                      ject to receivables included in such financial as-  
25                      sets plus any rights or other assets designed to



1           assure the servicing or timely distribution of  
2           proceeds to security holders;

3                 “(B) cash; and

4                 “(C) securities.

5           “(3) the term ‘eligible entity’ means—

6                 “(A) an issuer; or

7                 “(B) a trust, corporation, partnership, or  
8           other entity engaged exclusively in the business  
9           of acquiring and transferring eligible assets di-  
10          rectly or indirectly to an issuer and taking ac-  
11          tions ancillary thereto;

12           “(4) the term ‘issuer’ means a trust, corpora-  
13          tion, partnership, or other entity engaged exclusively  
14          in the business of acquiring and holding eligible as-  
15          sets, issuing securities backed by eligible assets, and  
16          taking actions ancillary thereto; and

17           “(5) the term ‘transferred’ means the debtor,  
18          pursuant to a written agreement, represented and  
19          warranted that eligible assets were sold, contributed,  
20          or otherwise conveyed with the intention of removing  
21          them from the estate of the debtor pursuant to sub-  
22          section (b)(5), irrespective, without limitation of—

23                 “(A) whether the debtor directly or indi-  
24          rectly obtained or held an interest in the issuer  
25          or in any securities issued by the issuer;

1           “(B) whether the debtor had an obligation  
2           to repurchase or to service or supervise the  
3           servicing of all or any portion of such eligible  
4           assets; or

5           “(C) the characterization of such sale, con-  
6           tribution, or other conveyance for tax, account-  
7           ing, regulatory reporting, or other purposes.”.

8   **SEC. 1013. FEDERAL RESERVE COLLATERAL REQUIRE-**  
9           **MENTS.**

10       The 3d sentence of the 3d undesignated paragraph  
11 of section 16 of the Federal Reserve Act (12 U.S.C. 412)  
12 is amended by striking “acceptances acquired under the  
13 provisions of section 13 of this Act” and inserting “accept-  
14 ances acquired under section 10A, 10B, 13, or 13A of this  
15 Act”.

16   **SEC. 1014. EFFECTIVE DATE; APPLICATION OF AMEND-**  
17           **MENTS.**

18       (a) **EFFECTIVE DATE.**—This title shall take effect on  
19 the date of the enactment of this Act.

20       (b) **APPLICATION OF AMENDMENTS.**—The amend-  
21 ments made by this title shall apply with respect to cases  
22 commenced or appointments made under any Federal or  
23 State law after the date of enactment of this Act, but shall  
24 not apply with respect to cases commenced or appoint-

1 ments made under any Federal or State law before the  
2 date of enactment of this Act.

3 **TITLE XI—TECHNICAL**  
4 **CORRECTIONS**

5 **SEC. 1101. DEFINITIONS.**

6 Section 101 of title 11, United States Code, as  
7 amended by sections 102, 105, 132, 138, 301, 302, 402,  
8 902, and 1007, is amended—

9 (1) by striking “In this title—” and inserting  
10 “In this title:”;

11 (2) in each paragraph, by inserting “The term”  
12 after the paragraph designation;

13 (3) in paragraph (35)(B), by striking “para-  
14 graphs (21B) and (33)(A)” and inserting “para-  
15 graphs (23) and (35)”;

16 (4) in each of paragraphs (35A) and (38), by  
17 striking “; and” at the end and inserting a period;

18 (5) in paragraph (51B)—

19 (A) by inserting “who is not a family farm-  
20 er” after “debtor” the first place it appears;  
21 and

22 (B) by striking “thereto having aggregate”  
23 and all that follows through the end of the  
24 paragraph;

1           (6) by amending paragraph (54) to read as fol-  
2       lows:

3           “(54) The term ‘transfer’ means—

4               “(A) the creation of a lien;

5               “(B) the retention of title as a security in-  
6       terest;

7               “(C) the foreclosure of a debtor’s equity of  
8       redemption; or

9               “(D) each mode, direct or indirect, abso-  
10       lute or conditional, voluntary or involuntary, of  
11       disposing of or parting with—

12               “(i) property; or

13               “(ii) an interest in property;”;

14       (7) in each of paragraphs (1) through (35), in  
15       each of paragraphs (36) and (37), and in each of  
16       paragraphs (40) through (55) (including paragraph  
17       (54), as amended by paragraph (6) of this section),  
18       by striking the semicolon at the end and inserting a  
19       period; and

20       (8) by redesignating paragraphs (4) through  
21       (55), including paragraph (54), as amended by para-  
22       graph (6) of this section, in entirely numerical se-  
23       quence.

1   **SEC. 1102. ADJUSTMENT OF DOLLAR AMOUNTS.**

2       Section 104 of title 11, United States Code, is  
3 amended by inserting “522(f)(3), 707(b)(5),” after  
4 “522(d),” each place it appears.

5   **SEC. 1103. EXTENSION OF TIME.**

6       Section 108(c)(2) of title 11, United States Code, is  
7 amended by striking “922” and all that follows through  
8 “or”, and inserting “922, 1201, or”.

9   **SEC. 1104. TECHNICAL AMENDMENTS.**

10      Title 11 of the United States Code is amended—

11          (1) in section 109(b)(2) by striking “subsection  
12          (c) or (d) of”; and

13          (2) in section 552(b)(1) by striking “product”  
14          each place it appears and inserting “products”.

15   **SEC. 1105. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**  
16                   **FRAUDULENTLY PREPARE BANKRUPTCY PE-**  
17                   **TITIONS.**

18      Section 110(j)(3) of title 11, United States Code, is  
19 amended by striking “attorney’s” and inserting  
20 “attorneys’ ”.

21   **SEC. 1106. LIMITATION ON COMPENSATION OF PROFES-**  
22                   **SIONAL PERSONS.**

23      Section 328(a) of title 11, United States Code, is  
24 amended by inserting “on a fixed or percentage fee basis,”  
25 after “hourly basis,”.

1   **SEC. 1107. SPECIAL TAX PROVISIONS.**

2           Section 346(g)(1)(C) of title 11, United States Code,  
3 is amended by striking “, except” and all that follows  
4 through “1986”.

5   **SEC. 1108. EFFECT OF CONVERSION.**

6           Section 348(f)(2) of title 11, United States Code, is  
7 amended by inserting “of the estate” after “property” the  
8 first place it appears.

9   **SEC. 1109. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

10          Section 503(b)(4) of title 11, United States Code, is  
11 amended by inserting “subparagraph (A), (B), (C), (D),  
12 or (E) of” before “paragraph (3)”.

13   **SEC. 1110. PRIORITIES.**

14          Section 507(a) of title 11, United States Code, as  
15 amended by section 323, is amended in paragraph (4), as  
16 so redesignated by section 142, by striking the semicolon  
17 at the end and inserting a period.

18   **SEC. 1111. EXEMPTIONS.**

19          Section 522(g)(2) of title 11, United States Code, is  
20 amended by striking “subsection (f)(2)” and inserting  
21 “subsection (f)(1)(B)”.

22   **SEC. 1112. EXCEPTIONS TO DISCHARGE.**

23          Section 523 of title 11, United States Code, as  
24 amended by section 146, is amended—

25               (1) in subsection (a)(3), by striking “or (6)”  
26               each place it appears and inserting “(6), or (15)”;

1           (2) as amended by section 304(e) of Public Law  
2       103–394 (108 Stat. 4133), in paragraph (15), by  
3       transferring such paragraph so as to insert it after  
4       paragraph (14A) of subsection (a);

5           (3) in subsection (a)(9), by inserting  
6       “, watercraft, or aircraft” after “motor vehicle”;

7           (4) in subsection (a)(15), as so redesignated by  
8       paragraph (2) of this subsection, by inserting “to a  
9       spouse, former spouse, or child of the debtor and”  
10      after “(15)”; and

11          (5) in subsection (e), by striking “a insured”  
12      and inserting “an insured”.

13   **SEC. 1113. EFFECT OF DISCHARGE.**

14      Section 524(a)(3) of title 11, United States Code, is  
15      amended by striking “section 523” and all that follows  
16      through “or that” and inserting “section 523, 1228(a)(1),  
17      or 1328(a)(1) of this title, or that”.

18   **SEC. 1114. PROTECTION AGAINST DISCRIMINATORY TREAT-**  
19                   **MENT.**

20      Section 525(c) of title 11, United States Code, is  
21      amended—

22          (1) in paragraph (1), by inserting “student” be-  
23      fore “grant” the second place it appears; and

1           (2) in paragraph (2), by striking “the program  
2           operated under part B, D, or E of” and inserting  
3           “any program operated under”.

4   **SEC. 1115. PROPERTY OF THE ESTATE.**

5           Section 541(b)(4)(B)(ii) of title 11, United States  
6   Code, is amended by inserting “365 or” before “542”.

7   **SEC. 1116. PREFERENCES.**

8           (a) IN GENERAL.—Section 547 of title 11, United  
9   States Code, is amended—

10           (1) in subsection (b), by striking “subsection  
11           (c)” and inserting “subsections (c) and (i)”; and

12           (2) by adding at the end the following:

13           “(i) If the trustee avoids under subsection (b) a  
14   transfer made between 90 days and 1 year before the date  
15   of the filing of the petition, by the debtor to an entity  
16   that is not an insider for the benefit of a creditor that  
17   is an insider, such transfer may be avoided under this sec-  
18   tion only with respect to the creditor that is an insider.”.

19           (b) APPLICABILITY.—The amendments made by this  
20   section shall apply to any case that is pending or com-  
21   menced on or after the date of enactment of this Act.

22   **SEC. 1117. POSTPETITION TRANSACTIONS.**

23           Section 549(c) of title 11, United States Code, is  
24   amended—



1 (1) by inserting “an interest in” after “transfer  
2 of”;

3 (2) by striking “such property” and inserting  
4 “such real property”; and

5 (3) by striking “the interest” and inserting  
6 “such interest”.

7 **SEC. 1118. DISPOSITION OF PROPERTY OF THE ESTATE.**

8 Section 726(b) of title 11, United States Code, is  
9 amended by striking “1009,”.

10 **SEC. 1119. GENERAL PROVISIONS.**

11 Section 901(a) of title 11, United States Code, is  
12 amended by inserting “1123(d),” after “1123(b),”.

13 **SEC. 1120. APPOINTMENT OF ELECTED TRUSTEE.**

14 Section 1104(b) of title 11, United States Code, is  
15 amended—

16 (1) by inserting “(1)” after “(b)”; and

17 (2) by adding at the end the following:

18 “(2)(A) If an eligible, disinterested trustee is elected  
19 at a meeting of creditors under paragraph (1), the United  
20 States trustee shall file a report certifying that election.  
21 Upon the filing of a report under the preceding sentence—

22 “(i) the trustee elected under paragraph (1)  
23 shall be considered to have been selected and ap-  
24 pointed for purposes of this section; and

1           “(ii) the service of any trustee appointed under  
2           subsection (d) shall terminate.

3           “(B) In the case of any dispute arising out of an elec-  
4           tion under subparagraph (A), the court shall resolve the  
5           dispute.”.

6   **SEC. 1121. ABANDONMENT OF RAILROAD LINE.**

7           Section 1170(e)(1) of title 11, United States Code,  
8           is amended by striking “section 11347” and inserting  
9           “section 11326(a)”.

10   **SEC. 1122. CONTENTS OF PLAN.**

11           Section 1172(c)(1) of title 11, United States Code,  
12           is amended by striking “section 11347” and inserting  
13           “section 11326(a)”.

14   **SEC. 1123. DISCHARGE UNDER CHAPTER 12.**

15           Subsections (a) and (c) of section 1228 of title 11,  
16           United States Code, are amended by striking  
17           “1222(b)(10)” each place it appears and inserting  
18           “1222(b)(9)”.

19   **SEC. 1124. BANKRUPTCY CASES AND PROCEEDINGS.**

20           Section 1334(d) of title 28, United States Code, is  
21           amended—

22           (1) by striking “made under this subsection”  
23           and inserting “made under subsection (c)”; and

24           (2) by striking “This subsection” and inserting  
25           “Subsection (c) and this subsection”.

1   **SEC. 1125. KNOWING DISREGARD OF BANKRUPTCY LAW OR**  
2                   **RULE.**

3           Section 156(a) of title 18, United States Code, is  
4 amended—

5           (1) in the first undesignated paragraph—

6                   (A) by inserting “(1) the term” before  
7                   “‘bankruptcy’; and

8                   (B) by striking the period at the end and  
9                   inserting “; and”; and

10          (2) in the second undesignated paragraph—

11                   (A) by inserting “(2) the term” before  
12                   “‘document’; and

13                   (B) by striking “this title” and inserting  
14                   “title 11”.

15   **SEC. 1126. TRANSFERS MADE BY NONPROFIT CHARITABLE**  
16                   **CORPORATIONS.**

17          (a) SALE OF PROPERTY OF ESTATE.—Section 363(d)  
18 of title 11, United States Code, is amended—

19           (1) by striking “only” and all that follows  
20           through the end of the subsection and inserting  
21           “only—

22                   “(1) in accordance with applicable nonbank-  
23                   ruptcy law that governs the transfer of property by  
24                   a corporation or trust that is not a moneyed, busi-  
25                   ness, or commercial corporation or trust; and

1           “(2) to the extent not inconsistent with any re-  
2       lief granted under subsection (c), (d), (e), or (f) of  
3       section 362 of this title.”.

4       (b) CONFIRMATION OF PLAN FOR REORGANIZA-  
5       TION.—Section 1129(a) of title 11, United States Code,  
6       as amended by section 140, is amended by adding at the  
7       end the following:

8           “(15) All transfers of property of the plan shall  
9       be made in accordance with any applicable provi-  
10      sions of nonbankruptcy law that govern the transfer  
11      of property by a corporation or trust that is not a  
12      moneyed, business, or commercial corporation or  
13      trust.”.

14      (c) TRANSFER OF PROPERTY.—Section 541 of title  
15      11, United States Code, as amended by section 1102, is  
16      amended by adding at the end the following:

17      “(f) Notwithstanding any other provision of this title,  
18      property that is held by a debtor that is a corporation de-  
19      scribed in section 501(c)(3) of the Internal Revenue Code  
20      of 1986 and exempt from tax under section 501(a) of such  
21      Code may be transferred to an entity that is not such a  
22      corporation, but only under the same conditions as would  
23      apply if the debtor had not filed a case under this title.”.

24      (d) APPLICABILITY.—The amendments made by this  
25      section shall apply to a case pending under title 11, United

1 States Code, on the date of enactment of this Act, except  
2 that the court shall not confirm a plan under chapter 11  
3 of this title without considering whether this section would  
4 substantially affect the rights of a party in interest who  
5 first acquired rights with respect to the debtor after the  
6 date of the petition. The parties who may appear and be  
7 heard in a proceeding under this section include the attor-  
8 ney general of the State in which the debtor is incor-  
9 porated, was formed, or does business.

10 (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
11 tion shall be deemed to require the court in which a case  
12 under chapter 11 is pending to remand or refer any pro-  
13 ceeding, issue, or controversy to any other court or to re-  
14 quire the approval of any other court for the transfer of  
15 property.

16 **SEC. 1127. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**  
17 **URE TO INCUR FINANCE CHARGES.**

18 Section 127 of the Truth in Lending Act (15 U.S.C.  
19 1637) is amended by adding at the end the following:

20 “(i) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-  
21 URE TO INCUR FINANCE CHARGES.—A creditor of an ac-  
22 count under an open end consumer credit plan may not  
23 terminate an account prior to its expiration date solely be-  
24 cause the consumer has not incurred finance charges on  
25 the account. Nothing in this subsection shall prohibit a

1 creditor from terminating an account for inactivity in 3  
2 or more consecutive months.”.

3 **SEC. 1128. PROTECTION OF VALID PURCHASE MONEY SE-**  
4 **CURITY INTERESTS.**

5 Section 547(c)(3)(B) of title 11, United States Code,  
6 is amended by striking “20” and inserting “30”.

7 **SEC. 1129. TRUSTEES.**

8 (a) SUSPENSION AND TERMINATION OF PANEL  
9 TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of  
10 title 28, United States Code, is amended—

11 (1) by inserting “(1)” after “(d)”; and

12 (2) by adding at the end the following:

13 “(2) A trustee whose appointment under subsection  
14 (a)(1) or under subsection (b) is terminated or who ceases  
15 to be assigned to cases filed under title 11 of the United  
16 States Code may obtain judicial review of the final agency  
17 decision by commencing an action in the United States  
18 district court for the district for which the panel to which  
19 the trustee is appointed under subsection (a)(1), or in the  
20 United States district court for the district in which the  
21 trustee is appointed under subsection (b) resides, after  
22 first exhausting all available administrative remedies,  
23 which if the trustee so elects, shall also include an admin-  
24 istrative hearing on the record. Unless the trustee elects  
25 to have an administrative hearing on the record, the trust-

1 ee shall be deemed to have exhausted all administrative  
2 remedies for purposes of this paragraph if the agency fails  
3 to make a final agency decision within 90 days after the  
4 trustee requests administrative remedies. The Attorney  
5 General shall prescribe procedures to implement this para-  
6 graph. The decision of the agency shall be affirmed by  
7 the district court unless it is unreasonable and without  
8 cause based on the administrative record before the agen-  
9 cy.”.

10 (b) EXPENSES OF STANDING TRUSTEES.—Section  
11 586(e) of title 28, United States Code, is amended by add-  
12 ing at the end the following:

13 “(3) After first exhausting all available administra-  
14 tive remedies, an individual appointed under subsection  
15 (b) may obtain judicial review of final agency action to  
16 deny a claim of actual, necessary expenses under this sub-  
17 section by commencing an action in the United States dis-  
18 trict court in the district where the individual resides. The  
19 decision of the agency shall be affirmed by the district  
20 court unless it is unreasonable and without cause based  
21 upon the administrative record before the agency.

22 “(4) The Attorney General shall prescribe procedures  
23 to implement this subsection.”.

1 **TITLE XII—GENERAL EFFECTIVE**  
2 **DATE; APPLICATION OF**  
3 **AMENDMENTS**

4 **SEC. 1201. EFFECTIVE DATE; APPLICATION OF AMEND-**  
5 **MENTS.**

6 (a) EFFECTIVE DATE.—Except as provided otherwise  
7 in this Act, this Act and the amendments made by this  
8 Act shall take effect 180 days after the date of the enact-  
9 ment of this Act.

10 (b) APPLICATION OF AMENDMENTS.—Except as oth-  
11 erwise provided in this Act, the amendments made by this  
12 Act shall not apply with respect to cases commenced under  
13 title 11 of the United States Code before the effective date  
14 of this Act.